

EXHIBIT 4

Case No. 14-CV-704-GKF-JFJ

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

and

OSAGE MINERAL COUNCIL,

Intervenor-Plaintiff,

vs.

Case No. 14-CV-704-GFK-JFJ

OSAGE WIND, LLC;
ENEL KANSAS, LLC; and
ENEL GREEN POWER NORTH
AMERICA, INC.,

Defendants.

DEPOSITION OF AARON WEIGEL
TAKEN ON BEHALF OF THE INTERVENOR-PLAINTIFF
ON JUNE 29, 2021, BEGINNING AT 9:07 A.M.
ALL PRESENT ATTENDED REMOTELY VIA ZOOM
REPORTED BY KARLI DANIELS, CSR, RPR, CCR

APPEARANCES:

On behalf of the Plaintiff:

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<p>Page 2</p> <p>1 APPEARANCES CONTINUED:</p> <p>2 On behalf of the Intervenor-Plaintiff:</p> <p>3 Mary Katherine Nagle Shoney Blake PIPESTEM & NAGLE, P.C. 401 South Boston Avenue, Suite 2200 5 Tulsa, Oklahoma 74103 mknagle@pipestemlaw.com</p> <p>6</p> <p>7 On behalf of the Defendants:</p> <p>8 Ryan Ray NORMAN, WOHLGEMUTH, CHANDLER, JETER, BARNETT & 9 RAY, P.C. 401 South Boston Avenue, Suite 2900 10 Tulsa, Oklahoma 74103 (918)583-7571 rar@nwcjlaw.com</p> <p>11</p> <p>12 Lynn Slade Sarah Stevenson 13 MODRALL, SPERLING, ROEHL, HARRIS & SISK, P.A. 500 Fourth Street NW, Suite 1000 14 Albuquerque, New Mexico 87103 (505) 848-1800 lynn.slade@modrall.com</p> <p>15</p> <p>16 Bob Comer NORTON, ROSE, FULBRIGHT, LLP 17 1225 17th Street, Suite 3050 Denver, Colorado 80202 18 (303)801-2728 bob.comer@nortonrosefulbright.com</p> <p>19</p> <p>20 Also present: Michelle Hammock, Christina Watson</p> <p>21 Videographers: Gabe Pack, CJ Shelton</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 4</p> <p>1 THE VIDEOGRAPHER: This is the videotaped</p> <p>2 deposition of Aaron Weigel, in the matter of United States</p> <p>3 and Osage Minerals Council versus Osage Wind, on June 29,</p> <p>4 2021. We are on the record at 9:07 a.m.</p> <p>5 Will counsel please state your appearances for</p> <p>6 the record.</p> <p>7 MS. NAGLE: Good morning. Mary Katherine Nagle</p> <p>8 of Pipestem & Nagle Law representing the</p> <p>9 Intervenor-Plaintiff, the Osage Minerals Council. With me</p> <p>10 here today I have my colleague, Shoney Blake.</p> <p>11 MR. FIELDS: United States of America,</p> <p>12 Plaintiff. My name's Nolan Fields, and I have Cathy</p> <p>13 McClanahan, Charles Babst with the Department of Interior</p> <p>14 Solicitors Office, Michelle Hammock and Chris Watson with</p> <p>15 our office.</p> <p>16 MR. RAY: Ryan Ray for the Defendants.</p> <p>17 Co-counsel Lynn Slade is also on the remote line. We are</p> <p>18 here for all defendants.</p> <p>19 THE VIDEOGRAPHER: The court reporter will now</p> <p>20 swear in the witness.</p> <p>21 WHEREUPON,</p> <p>22 AARON WEIGEL,</p> <p>23 after having been first duly sworn, deposes and says in</p> <p>24 reply to the questions propounded as follows, to-wit:</p> <p>25 DIRECT EXAMINATION</p>
<p>Page 3</p> <p>1 INDEX</p> <p>2 Page</p> <p>3 Direct Examination by Ms. Nagle 4</p> <p>4 Cross-Examination by Mr. Fields 111</p> <p>5 EXHIBITS</p> <p>6 Number Description Page</p> <p>7 89 Osage Wind Priv 000299-000302 21</p> <p>8 90 Osage Wind Priv 000427-000429 56</p> <p>9 91 Osage Wind Priv 000357-000358 70</p> <p>10 92 Osage Wind Priv 000359-000360 74</p> <p>11 93 Osage Wind Priv 000361 75</p> <p>12 94 Osage Wind Priv 000165-000167 79</p> <p>13 95 IEA 00226838 80</p> <p>14 96 IEA 00239657-00239658 98</p> <p>15 97 Osage Wind 019006-019009 103</p> <p>16 98 Osage Wind Priv 000128-000144 142</p> <p>17 99 Osage Wind Priv 000092-000093 152</p> <p>18 100 Osage Wind Priv 000090-000091 152</p> <p>19 101 Osage Wind Priv 000233-000238 180</p> <p>20 STIPULATIONS</p> <p>21 It is stipulated that the deposition of Aaron</p> <p>22 Weigel may be taken pursuant to agreement and in</p> <p>23 accordance with the Federal Rules of Civil Procedure on</p> <p>24 June 29, 2021, before Karli Daniels, CSR, RPR, CCR.</p> <p>25</p>	<p>Page 5</p> <p>1 BY MS. NAGLE:</p> <p>2 Q Great. Good morning. My name is Mary</p> <p>3 Katherine, and I'm a partner at Pipestem & Nagle Law, and</p> <p>4 we represent the Osage Minerals Council, and so I will be</p> <p>5 asking you some questions here at the front end. I will</p> <p>6 try to make it as efficient as possible because I know my</p> <p>7 colleague, Nolan, over at the United States Attorney's</p> <p>8 Office is going to have questions as well.</p> <p>9 Just so I -- just so I know, is it -- your last</p> <p>10 name, is it Weigel? Is that how you pronounce it?</p> <p>11 A That's correct.</p> <p>12 Q Okay. Thank you. So, Mr. Weigel, good morning.</p> <p>13 MS. NAGLE: I'm sorry, did you say something,</p> <p>14 Nolan?</p> <p>15 MR. FIELDS: Yeah. I'm sorry for the feedback.</p> <p>16 I think that there's another attorney on the call, but he</p> <p>17 didn't announce himself for the record. I think that</p> <p>18 might want to happen, especially because he hasn't</p> <p>19 formally entered on behalf of the case yet.</p> <p>20 MS. NAGLE: Yes. I see -- and I think he was</p> <p>21 here with us yesterday.</p> <p>22 Ryan, is that one of --</p> <p>23 MR. RAY: Yes. I believe that's probably Bob</p> <p>24 Comer that's joined, and he will be appearing in short</p> <p>25 order for the defendants. That process is underway.</p>

<p>Page 6</p> <p>1 MS. NAGLE: Okay.</p> <p>2 MR. RAY: Sorry, Mary Katherine. Thank you.</p> <p>3 MS. NAGLE: No worries. No worries. Thank you.</p> <p>4 Q (BY MS. NAGLE) So, Mr. Weigel, just before we</p> <p>5 get started, have you had your deposition taken before?</p> <p>6 A I have not.</p> <p>7 Q You have not. Okay. So just so you know how</p> <p>8 things will go today, I will be asking you some questions,</p> <p>9 showing you some documents. You know, it's -- it's a</p> <p>10 formal process, you're under oath, but, of course, if you</p> <p>11 need to take a break at any time, I just ask that you</p> <p>12 answer the question that's put before you, then you can</p> <p>13 say, you know what, I need a break. I will watch the</p> <p>14 clock and try to take breaks every hour and a half for</p> <p>15 everyone's benefit, but, you know, this isn't -- you know,</p> <p>16 it's not a test of willpower. If anyone needs to go to</p> <p>17 the bathroom or get some food or water, that's always</p> <p>18 understandable, so please, please do not hesitate to let</p> <p>19 me know if you need a break.</p> <p>20 And your attorney, Mr. Ray, will likely object</p> <p>21 to some different things, and that's completely fine. I</p> <p>22 just ask that you ask my questions unless he instructs you</p> <p>23 not to, in which case that's something we have to work out</p> <p>24 between us attorneys.</p> <p>25 What did you do to prepare for your deposition</p>	<p>Page 8</p> <p>1 construction?</p> <p>2 A No.</p> <p>3 Q Okay. And let's see here. When did you start</p> <p>4 working for Tradewind Energy?</p> <p>5 A Hired in the spring of 2008 for Tradewind</p> <p>6 Energy.</p> <p>7 Q Okay.</p> <p>8 A Although, technically, I was an intern about</p> <p>9 four years before that, if you count that, but not</p> <p>10 officially an employee until 2008.</p> <p>11 Q Okay. And what was your job title at that time</p> <p>12 in 2008?</p> <p>13 A I was hired as what they call a developer, which</p> <p>14 in renewables tends to mean a project manager.</p> <p>15 Q And so what were -- how would you describe your</p> <p>16 responsibilities at that time?</p> <p>17 A The way we typically described it was you are</p> <p>18 responsible as kind of the CEO of a project, meaning that</p> <p>19 you were responsible for coordinating all activities</p> <p>20 necessary to get the project to the point where it was</p> <p>21 ready to be handed off to someone to own and operate it.</p> <p>22 So prior to construction, including everything from real</p> <p>23 estate to permitting to environmental, all the -- all the</p> <p>24 basic categories of development.</p> <p>25 Q Okay. And at that time, who was your</p>
<p>Page 7</p> <p>1 today?</p> <p>2 A I had a single preparatory call.</p> <p>3 Q Okay. Did you look at some documents?</p> <p>4 A I did review some communications, yes.</p> <p>5 Q Okay. And were those communications back from</p> <p>6 the 2013, 2014 time period?</p> <p>7 A Yeah. I believe they were understood to be</p> <p>8 relevant documents that might be worth looking at.</p> <p>9 Q Okay. And did you speak with anyone else</p> <p>10 besides your counsel regarding today's deposition?</p> <p>11 A I did not.</p> <p>12 Q Okay. Fair enough. So in terms of your</p> <p>13 educational background, do you hold any degrees?</p> <p>14 A I do have a degree in mechanical engineering,</p> <p>15 yes.</p> <p>16 Q Okay. And from what school?</p> <p>17 A University of Kansas.</p> <p>18 Q Jayhawks. All right. My mom was a professor</p> <p>19 there for many years, so I grew up watching Kansas</p> <p>20 basketball. Yes.</p> <p>21 Okay. So in terms of mechanical engineering, do</p> <p>22 you hold any licenses or certificates?</p> <p>23 A I do not.</p> <p>24 Q Okay. I just don't understand how that works,</p> <p>25 so -- and have you received any formal training in</p>	<p>Page 9</p> <p>1 supervisor?</p> <p>2 A I worked, I believe, directly for Matt</p> <p>3 Gilhousen.</p> <p>4 Q Now, did -- now, that was in 2008. Did your job</p> <p>5 title ever change after that?</p> <p>6 A Yes, it did.</p> <p>7 Q Do you recall when?</p> <p>8 A I do not recall.</p> <p>9 Q Okay.</p> <p>10 A I suspect prior to that 2014, '15 era, but its</p> <p>11 been some time since then.</p> <p>12 Q Okay. So would you say sometime before you</p> <p>13 begin your work on the Osage Wind project, your job title</p> <p>14 changed? Is that correct?</p> <p>15 A I guess not technically before, because my</p> <p>16 initial -- one of any initial projects included the area</p> <p>17 that ultimately became Osage Wind.</p> <p>18 Q Okay.</p> <p>19 A Which Tradewind was developing separately at the</p> <p>20 time.</p> <p>21 Q Okay.</p> <p>22 A So the timeline's a little confusing there.</p> <p>23 Q Sure.</p> <p>24 A So I would say my title did change at the point</p> <p>25 prior to 2013.</p>

<p style="text-align: right;">Page 10</p> <p>1 Q Okay. And when your title did change, what did 2 your new title become?</p> <p>3 A It was probably portfolio management of some -- 4 some vein.</p> <p>5 Q Okay. And would that --</p> <p>6 A Director of portfolio management or something.</p> <p>7 Q Okay. And would that have still been for 8 Tradewind?</p> <p>9 A Yes.</p> <p>10 Q Okay.</p> <p>11 A Yes.</p> <p>12 Q And you did say that one of your initial 13 projects was the area that became Osage Wind. Do you 14 recall roughly when you would have started working on that 15 area?</p> <p>16 A Yeah. Almost immediately. So summer or fall of 17 2008.</p> <p>18 Q Okay. And what were some of the initial 19 responsibilities you had with regards to that? I mean, 20 was it sort of scoping out the land? Or maybe if you 21 could describe it in your own words.</p> <p>22 A Yeah. The initial stages of all developments 23 are the same, which is trying to understand who the owners 24 of the property are, so the land owners typically, and 25 then meeting with any involved local government agencies.</p>	<p style="text-align: right;">Page 12</p> <p>1 Q Was this your first meeting with an entity or a 2 governmental body within a tribal nation?</p> <p>3 A It would have been close, if not the first.</p> <p>4 Q Sure. And prior to working on the Osage Wind 5 Farm project, had you had any training with regards to 6 Indian trust property?</p> <p>7 A No.</p> <p>8 Q Okay. Okay. So we -- so we decided or we 9 learned that you became in charge of portfolio management 10 sometime in 2013 or 2014, we're not sure exactly when. 11 Did your job title with Tradewind ever change after that?</p> <p>12 A My final job title was a vice president of 13 portfolio management, and that would have been prior to 14 the sale to Enel --</p> <p>15 Q Okay.</p> <p>16 A -- which occurred in I believe it was March of 17 2019.</p> <p>18 Q Okay.</p> <p>19 A So I'm now currently an Enel employee with that 20 same title, vice president of portfolio management, soon 21 to be changed once it integrates with whatever their 22 system is because it's different.</p> <p>23 Q Okay. Okay. And how did your job 24 responsibilities change when you became vice president of 25 portfolio management?</p>
<p style="text-align: right;">Page 11</p> <p>1 And so that included meetings with the mayor and the 2 county, and, in fact, a meeting with the Osage Minerals 3 Council sometime late 2008, early 2009 I would have also 4 attended.</p> <p>5 Q And when you met with the Osage Minerals Council 6 in late 2008 or 2009, what was the extent of that 7 communication? Did you inform them of the intent to build 8 a wind farm? Or maybe you could describe that in your own 9 words.</p> <p>10 A Yes. We intended to inform them of our plans 11 and to open negotiation around what we would normally call 12 a pilot agreement, an agreement you would do with a party 13 like a county. Normally in Kansas where we had been 14 developing until that point, counties didn't have any 15 permitting process, so what you would do is go in ahead of 16 time, you'd negotiate an agreement, so say here's what 17 we're planning on doing, you know, we'd like to sign an 18 agreement with you that says the parties agree to this 19 type of behavior, and normally there was payment 20 associated with that. So this meeting was to open that 21 conversation.</p> <p>22 Q Okay. Was there anything that was decided in 23 that meeting?</p> <p>24 A I would say there were no -- there were no 25 outcomes that were official from that meeting.</p>	<p style="text-align: right;">Page 13</p> <p>1 A Yeah. I focused more on the tools and systems 2 necessary to manage primarily the cost and risk of 3 projects across the portfolio. So databases, 4 spreadsheets, web-based tools. The company was obviously 5 developing more than just one project, so the intent was 6 to consolidate that information. I will add that my 7 project responsibility never handed to someone else, so I 8 remained still responsible for that kind of Osage Wind 9 area, which Tradewind called Mustang Run at the time, 10 which is a corollary project.</p> <p>11 Q Okay. Were you also director of project 12 development for Mustang Run?</p> <p>13 A I was the project manager, the developer for 14 Mustang Run, yes.</p> <p>15 Q Okay. When did you begin your work on Mustang 16 Run?</p> <p>17 A That was that 2008 date I told you earlier. 18 Just for clarity, I suppose, Mustang Run was originally 19 supposed to be a 300-ish megawatt project that encompassed 20 the area to the east of Osage Wind as well as the area 21 that's now Osage Wind. Ultimately, Wind Capital, an 22 entirely separate entity at the time, secured the land 23 rights for the western half and Tradewind secured the land 24 rights for the eastern half, and so they became two half 25 as big projects, a single 150 megawatt Mustang and a</p>

<p>Page 14</p> <p>1 single 150 megawatt Osage.</p> <p>2 Q I see. Okay. And while you were working on</p> <p>3 Mustang Run and Osage Wind, were you working on any other</p> <p>4 projects at that time?</p> <p>5 A I did have a handful of projects primarily in</p> <p>6 Arkansas I was working on.</p> <p>7 Q What were your responsibilities with regards to</p> <p>8 those projects?</p> <p>9 A Exact same.</p> <p>10 Q Okay. Did you interface with any tribal</p> <p>11 governments for any of those projects in Arkansas?</p> <p>12 A I did not.</p> <p>13 Q Okay. Did any of those projects involve Indian</p> <p>14 trust property?</p> <p>15 A They did not.</p> <p>16 Q Okay. So while you were working at Tradewind on</p> <p>17 the Osage Wind Farm project, did you have any other job</p> <p>18 titles besides director of project development or</p> <p>19 portfolio management?</p> <p>20 A I don't recall anything different than those two</p> <p>21 categories, no.</p> <p>22 Q Okay. And in terms of your role as, you know,</p> <p>23 director of project development or portfolio management,</p> <p>24 did you ever have any direct communications with any of</p> <p>25 the subcontractors?</p>	<p>Page 16</p> <p>1 A My involvement was that of a typical developer</p> <p>2 role which might be to prepare schedules that would</p> <p>3 ultimately become part of those documents. The language</p> <p>4 for those documents was ultimately outside of my</p> <p>5 responsibility.</p> <p>6 Q Okay. And so did your responsibilities for the</p> <p>7 Osage Wind Farm project change at all after Tradewind</p> <p>8 purchased the wind farm from Wind Capital Group in 2013?</p> <p>9 A My responsibilities changed. I guess could you</p> <p>10 clarify that a little bit? Because if Tradewind didn't</p> <p>11 own it, I was not necessarily responsible for making any</p> <p>12 decisions relative. So during the period in which Osage</p> <p>13 was owned by Wind Capital Group, there was a transitionary</p> <p>14 period when we were attempting to purchase it, although it</p> <p>15 was outside the control entirely of Tradewinds, so I would</p> <p>16 have been incapable of making any decisions of</p> <p>17 representing anything for Osage Winds until the time of</p> <p>18 which Tradewind did own it.</p> <p>19 Q Okay.</p> <p>20 A After that exact purchase, then, you know, my</p> <p>21 responsibility would have ended at the time that Enel took</p> <p>22 ultimate ownership, and I would have taken a more advisory</p> <p>23 role in the project at that point.</p> <p>24 Q Okay. And so you're just -- when you say when</p> <p>25 Enel took ownership, are you referring to when Enel Kansas</p>
<p>Page 15</p> <p>1 A Direct communications with subcontractors, yes.</p> <p>2 Q And what sorts of communications would you have</p> <p>3 with them?</p> <p>4 A Can you clarify what subcontractors you're</p> <p>5 speaking of? There obviously are many entities that the</p> <p>6 company would hire to do work.</p> <p>7 Q Sure. How about IEA?</p> <p>8 A Yes.</p> <p>9 Q Yes. Okay.</p> <p>10 A I did communicate with IEA rather, you know,</p> <p>11 consistently throughout that time period.</p> <p>12 Q Okay. And what about Cooper?</p> <p>13 A I don't recognize Cooper.</p> <p>14 Q Okay. Sanderfoot?</p> <p>15 A Don't recognize Sanderfoot.</p> <p>16 Q Okay. Dykon Blasting?</p> <p>17 A No.</p> <p>18 Q Okay. So did you have any involvement in</p> <p>19 securing the financing for the Osage Wind Farm project?</p> <p>20 A No.</p> <p>21 Q Okay. Were you involved in structuring -- I</p> <p>22 know there were some corporate transactions between some</p> <p>23 of the various related corporate entities in the Enel</p> <p>24 family related to the Osage Wind Farm. Were you involved</p> <p>25 in any of those transactions?</p>	<p>Page 17</p> <p>1 bought Osage Wind from Tradewind in 2014?</p> <p>2 MR. RAY: Object to form.</p> <p>3 A I don't know which entity within Enel purchased</p> <p>4 it. I know that Tradewind sold it to an Enel entity.</p> <p>5 Q (BY MS. NAGLE) Okay. Fair enough. Who was your</p> <p>6 direct supervisor when you were working on Osage Wind?</p> <p>7 A It would have been Matt Gilhousen.</p> <p>8 Q Okay. Was he your direct supervisor on other</p> <p>9 projects as well or just Osage Wind?</p> <p>10 A All projects.</p> <p>11 Q Okay. And who was he employed by at that time?</p> <p>12 A He was a founding member of Tradewind Energy.</p> <p>13 Q And while you were working on Osage Wind, did</p> <p>14 you work with a team?</p> <p>15 A All projects of Tradewind were developed using</p> <p>16 subject matter experts from many departments, so I guess</p> <p>17 the answer to that would be yes.</p> <p>18 Q Okay. And do you recall the names of the</p> <p>19 individuals that you worked most closely with on Osage</p> <p>20 Wind?</p> <p>21 A Is there a specific area you're interested in?</p> <p>22 The company was 50 to 60 people, all of which had a --</p> <p>23 Q You know, anyone that you interfaced with with</p> <p>24 regards to permitting regulations, you know, the sort of</p> <p>25 governmental relations prior -- you know, prior to and</p>

<p>1 during construction.</p> <p>2 A I would say probably Jennifer Dean is the</p> <p>3 permitting subject matter expert at Tradewind at the time,</p> <p>4 still -- still has a role similar to that. Many</p> <p>5 conversations with Matt Gilhousen, previously mentioned,</p> <p>6 Rob Freeman and Geoff Coventry, who were the other</p> <p>7 partners of Tradewind at the time. That's probably the</p> <p>8 extent of the Tradewind team that was closely involved.</p> <p>9 Q Okay. And these were all folks employed by</p> <p>10 Tradewind. Is that correct?</p> <p>11 A Correct.</p> <p>12 Q Did you ever communicate regularly with anyone</p> <p>13 at Enel at this time?</p> <p>14 A As you're aware, there's a partnership that was</p> <p>15 existing at the time, and so communication about the</p> <p>16 portfolio and about, you know, conceptually what projects</p> <p>17 might be coming was common, so, yes.</p> <p>18 Q Okay. And who at Enel would you speak with most</p> <p>19 often about the project?</p> <p>20 A For Osage Winds, given the advanced nature of</p> <p>21 the project, meaning it was close to construction, it</p> <p>22 probably would have been Nick Lincoln, Mike Storage was on</p> <p>23 a handful of those discussions because it was</p> <p>24 transactional at the time and that was his expertise, as</p> <p>25 well as Amber Zuhlke -- not Amber, sorry, she was with</p>	<p>Page 18</p> <p>1 A That's correct.</p> <p>2 Q In addition to those outside entities, did you</p> <p>3 ever communicate with anyone from General Electric</p> <p>4 regarding the project?</p> <p>5 A I did not.</p> <p>6 Q Okay. What about JPM Capital Corporation, did</p> <p>7 you ever communicate with anyone there about the project?</p> <p>8 A Sounds like that was related to financing. I</p> <p>9 would not have been involved in that, don't recall that.</p> <p>10 Q Okay. All right. So I'm going to go ahead and</p> <p>11 enter -- actually, this is a really great moment because I</p> <p>12 need to actually verify what the last exhibit number was</p> <p>13 here yesterday just to make sure I get it.</p> <p>14 MS. NAGLE: Nolan, I don't know if you recall</p> <p>15 off the top of your head. I meant to check this morning.</p> <p>16 MR. FIELDS: Yes. I think we're at 89 now.</p> <p>17 This would be 89.</p> <p>18 MS. NAGLE: Thank you so much. That was on my</p> <p>19 to do list this morning, and I forgot to check.</p> <p>20 Q (BY MS. NAGLE) Okay. So I'm going to enter what</p> <p>21 will be Exhibit 89 into the record, and I am going to</p> <p>22 share my screen. And for the record I will note that this</p> <p>23 is a document Bates stamped Osage Wind Priv 000299, I'm</p> <p>24 marking it as Exhibit 89, and it's an email exchange with</p> <p>25 the subject BIA. I'll give you a second to look at it</p>
<p>Page 19</p> <p>1 Wind Capital Group my apologies. Joan Heredia would have</p> <p>2 been the Enel counterpart to Jennifer Dean.</p> <p>3 Q Okay.</p> <p>4 A And that's probably it.</p> <p>5 Q Okay. And were you ever involved in the change</p> <p>6 order request process for the project?</p> <p>7 A Change order request process. Maybe, I guess is</p> <p>8 the answer to that.</p> <p>9 Q Okay.</p> <p>10 A I don't recall specifically a change order</p> <p>11 request.</p> <p>12 Q Fair enough. That is a fine answer. It's</p> <p>13 totally fine to not recall. Okay. Let's see. Did you</p> <p>14 ever communicate with anyone outside of Tradewind, Osage</p> <p>15 Wind Capital, or any of the Enel entities about the</p> <p>16 project?</p> <p>17 A Well, obviously there was legal counsel</p> <p>18 involved, as you're aware. With that single addition I</p> <p>19 would say that that represented who I'm aware of.</p> <p>20 Q Okay. And we did discuss earlier that you did</p> <p>21 communicate with IEA. Is that correct?</p> <p>22 A (Nods head.)</p> <p>23 Q And it sounds like you may have also had some</p> <p>24 communications with the mayor, county, and the Osage</p> <p>25 Minerals Council. Is that correct?</p>	<p>Page 20</p> <p>1 here, Mr. Weigel, and I can certainly scroll down if you</p> <p>2 want to read more of the email chain. It looks like it's</p> <p>3 an email from you dated October 11, 2014.</p> <p>4 (WHEREUPON, Exhibit 89 was marked for</p> <p>5 identification.)</p> <p>6 A Yeah. Let me see the start of the chain, if</p> <p>7 possible.</p> <p>8 Q Sure. Absolutely. So it starts -- well,</p> <p>9 that's -- okay. So it looks like it starts here with an</p> <p>10 email from Steve Willman, then it goes up to this from</p> <p>11 what looks to be Matt Gilhousen, and then Steve Champagne,</p> <p>12 and then a very length email from William Scott, it seems,</p> <p>13 and Matt Gilhousen. Joan Heredia has a response, and then</p> <p>14 your response is here at the top.</p> <p>15 So I will just note here I'm interested in, you</p> <p>16 write, "Our research showed this permit isn't applicable,"</p> <p>17 and my question to you is what research are you referring</p> <p>18 to here?</p> <p>19 A There was a memo from Modrall Sperling that was</p> <p>20 relied upon throughout this process, stating, I believe,</p> <p>21 the activity of installing wind facilities was not mining.</p> <p>22 Q And do you have an understanding of who did that</p> <p>23 research? I mean, you said Modrall, but individual names</p> <p>24 of folks who did that research?</p> <p>25 A Yeah. We interacted primarily with Lynn Slade.</p>

<p style="text-align: right;">Page 22</p> <p>1 Q Okay. Do you know if anyone else on his team 2 worked on that research?</p> <p>3 A I believe I saw other names that were involved 4 in preparing it, but you'd have to ask him.</p> <p>5 Q Sure. And how was the research communicated to 6 you?</p> <p>7 A The PDF would have been delivered by email and 8 we would have had follow-up phone calls to discuss.</p> <p>9 Q Okay. And who asked Lynn Slade or Modrall 10 Sperling to undertake this research?</p> <p>11 A As I recall, this would have been the very first 12 point that the idea that mining may even remotely be an 13 issue, which we were unaware of. Despite me meeting with 14 the tribe in -- I'm sorry, the Mineral Council, in 2008 or 15 '9, the first time we learned about this was in 2013 16 sometime, at which point we reached out to our lawyers 17 which would have been Rouse Frets or maybe DFRG at the 18 time. They've changed names a couple of times. And they 19 went out and found an expert, as they normally would in 20 something that they weren't experts at, and that's when 21 Lynn Slade, I guess he prepared this, this memo for us.</p> <p>22 Q And so you said it was in response to something 23 in 2013 from the tribe. What did the tribe communicate to 24 Tradewind in 2013 in relation to mining or the need for a 25 permit?</p>	<p style="text-align: right;">Page 24</p> <p>1 Q And do you recall what the basis was for those 2 findings?</p> <p>3 A The memo itself referenced many other, you know, 4 case law, but, you know, as a -- as a -- not a lawyer 5 myself, as an engineer, we were focused on, you know, 6 whatever the definition of mining that was proposed in the 7 C.F.R. was, and then, you know, the results that was 8 explained to us by the lawyers, which, again, was relied 9 on.</p> <p>10 Q Sure. Absolutely. Did anyone that was in-house 11 counsel to Tradewind work, you know, with the attorneys at 12 Modrall Sperling on the research?</p> <p>13 MR. RAY: Object to form.</p> <p>14 A I wouldn't know that.</p> <p>15 Q (BY MS. NAGLE) Okay.</p> <p>16 A But I find it unlikely. Also, we don't have in 17 house. Tradewind never had in-house counsel, of course.</p> <p>18 Q Oh, okay. All right. So let's see here. Let 19 me pull up the next one. Sorry. Just one moment. Let me 20 find my next document, which for some reason is not where 21 I thought it was.</p> <p>22 Okay. All right. So I'm now going to show you 23 what has been previously marked in a prior deposition as 24 Exhibit 36. We've got the court reporter's stamp right 25 here. And this document Exhibit 36 is Osage Wind Priv</p>
<p style="text-align: right;">Page 23</p> <p>1 A I believe there was a letter that was sent. I 2 want to say it was from the Minerals Council asking about 3 what types of digging that we may need a permit for 4 digging. It wasn't actually addressed to Tradewind at the 5 time. I think it was to Wind Capital Group, who owned the 6 project, and then we were cc'ed, Tradewind was cc'ed on 7 that communication, and that was the first time we were 8 learning there's a consideration for mining.</p> <p>9 Q And you said Tradewind was cc'ed on that 10 communication. Did Wind Capital Group ask for the same 11 legal research or was it just Tradewind who asked for the 12 research?</p> <p>13 A I do not know the answer to that.</p> <p>14 Q Okay. Were you involved in the communication 15 directly to the attorneys at Modrall Sperling when 16 Tradewind asked for this research or was it someone else 17 who actually maybe asked?</p> <p>18 A I suspect it would have been Matt, but I -- I 19 don't think it was me.</p> <p>20 Q Okay. Okay. All right. And do you recall what 21 the findings were of this research?</p> <p>22 A The findings of the Modrall Sperling memo?</p> <p>23 Q Uh-huh.</p> <p>24 A Yeah. I firmly recall it saying our activities 25 would not represent mining.</p>	<p style="text-align: right;">Page 25</p> <p>1 000414. Is this the memo that you were just talking 2 about, Mr. Weigel?</p> <p>3 A Without reviewing it closely, it does look to be 4 similar in form.</p> <p>5 Q Sure. Sure. And I will note that it's dated 6 October 31, 2013, on Modrall Sperling letterhead. Does 7 that seem like the right timeline in terms of what we were 8 just talking about?</p> <p>9 A Yes.</p> <p>10 Q Okay. I'm happy to scroll down. It's a 11 seven-page memo. So to the extent you would like to see 12 any page here, please feel free to direct me, and I'll go 13 there. I'm just going to ask a few questions about 14 different aspects of the memo.</p> <p>15 First off, do you know who Bill Scott is?</p> <p>16 A I know he's an associate with Lynn, but I do not 17 have any direct communications or -- with him, I believe.</p> <p>18 Q Sure. Okay. And do you know who Sarah 19 Stevenson is?</p> <p>20 A I do not know where she fits in the Modrall 21 Sperling firm.</p> <p>22 Q Okay. So you never had any direct conversations 23 with either Bill Scott or Sarah Stevenson. Is that 24 correct?</p> <p>25 A That's correct. This was always through Lynn</p>

<p style="text-align: right;">Page 26</p> <p>1 Slade that these conversations occurred --</p> <p>2 Q Okay.</p> <p>3 A -- when I was ever involved.</p> <p>4 Q Okay. Do you recall roughly during that time</p> <p>5 period how many conversations you would have had with Lynn</p> <p>6 Slade about these legal questions?</p> <p>7 A This particular issue was somewhat common to</p> <p>8 have discussions about and I think through the following</p> <p>9 year would have been common to have discussions about.</p> <p>10 Enel is a 70,000 person company, and so as -- as this</p> <p>11 project advanced, there were always additional people</p> <p>12 getting involved whom had questions about the specific</p> <p>13 issue, and so we would tend to come back to this with some</p> <p>14 regularity to review.</p> <p>15 Q Sure. Now, in terms of -- I understand this is</p> <p>16 a legal memo and so the lawyers have to do their lawyer</p> <p>17 thing, but in terms of giving the lawyers the facts they</p> <p>18 would need to understand the scope of excavation, the form</p> <p>19 or method of excavation, who as Tradewind was responsible</p> <p>20 for providing the information in terms of what would</p> <p>21 actually be happening, you know, in the excavation phase</p> <p>22 of Osage Wind Farm project?</p> <p>23 A Yeah. I do recall discussions around the memo</p> <p>24 about what -- verbally what we had planned to do. It's</p> <p>25 not terribly difficult to describe the scope of digging</p>	<p style="text-align: right;">Page 28</p> <p>1 specific material. All that matters is the volume and</p> <p>2 mass of what you removed and the volume and mass of what</p> <p>3 goes back in the hole.</p> <p>4 Q (BY MS. NAGLE) And in terms of volume and mass,</p> <p>5 is another -- and I know nothing about engineering, but is</p> <p>6 another factor that engineers would take into</p> <p>7 consideration the size of the materials themselves?</p> <p>8 A There are, you know, civil engineering standards</p> <p>9 that say, you know, very large particles if you try and</p> <p>10 stack them together have very big air gaps and they tend</p> <p>11 to settle, and so as you can see, as the process went</p> <p>12 along, you know, the reason for the correction that</p> <p>13 eventually happened was that it would be dangerous and</p> <p>14 risky, the turbines can fall over if you didn't, you know,</p> <p>15 make the materials stable before putting them back into</p> <p>16 the ground. So that discussion definitely happens.</p> <p>17 Along that vein there were discussions about you</p> <p>18 can build foundations without digging a hole, you can put</p> <p>19 them on top of the surface. You can build foundations in</p> <p>20 all kinds of different shapes and manners and ways that</p> <p>21 were all discussed. Ultimately, we did it in the</p> <p>22 traditional way because we thought that it conformed to</p> <p>23 the law for the memo we were provided.</p> <p>24 Q And I'm familiar with some of those</p> <p>25 communications, and we'll get to that a little bit later.</p>
<p style="text-align: right;">Page 27</p> <p>1 for a foundation. Typically about 10 feet deep, typically</p> <p>2 about 50 feet wide; dig the dirt out, put the concrete in,</p> <p>3 put the dirt back on top. The construction of, you know,</p> <p>4 small-scale field roads wasn't also very difficult to</p> <p>5 describe, so I recall those being described verbally. I</p> <p>6 do not recall, you know, an engineering drawing of any</p> <p>7 kind being sent, although it possibly could have been.</p> <p>8 Q Okay. And in terms of those verbal</p> <p>9 conversations about the scope of excavation and</p> <p>10 construction, you said 10 feet deep, 50 feet -- 50 feet</p> <p>11 wide. At that time in those conversations, was the plan</p> <p>12 to purchase materials off site for backfill or was the</p> <p>13 plan to use the excavated material on site for backfill?</p> <p>14 Do you recall?</p> <p>15 A Yeah.</p> <p>16 MR. RAY: Object to form.</p> <p>17 A Yeah. There was never a plan as it related to</p> <p>18 turbine foundations to buy material and fill those holes</p> <p>19 back up with material from off site. The reason was an</p> <p>20 engineering reason, it's that there's no -- it doesn't</p> <p>21 matter what comes out of the hole. If you were digging</p> <p>22 out a hole of cotton candy or pudding, the engineering</p> <p>23 value is the same, it just has to be on top of the</p> <p>24 concrete. So whether it's dirt, whether it's sand,</p> <p>25 whether it's limestone, there's no need to purchase any</p>	<p style="text-align: right;">Page 29</p> <p>1 So for purposes of this memo, was it ever communicated to</p> <p>2 Lynn Slade and this team that there would be rock crushers</p> <p>3 on site crushing the limestone to a specific size?</p> <p>4 MR. RAY: Object to form.</p> <p>5 A The discussion of rock crushing happened on</p> <p>6 phone calls that I suspect Lynn Slade was on. It would</p> <p>7 have been difficult for him to have not been on those, so</p> <p>8 I suspect the answer to that is yes.</p> <p>9 Q (BY MS. NAGLE) Do you recall when those phone</p> <p>10 calls regarding rock crushing would have been happening?</p> <p>11 A It would have been closer to the start of</p> <p>12 construction, which would have been early or, you know,</p> <p>13 mid 2014 time frame.</p> <p>14 Q And would there have been conversations</p> <p>15 concerning rock crushing -- rock crush -- sorry -- rock</p> <p>16 crushing before mid 2014?</p> <p>17 A I don't know.</p> <p>18 Q Okay. Do you recall any conversations with</p> <p>19 anyone at Modrall Sperling about rock crushing before</p> <p>20 May 2014?</p> <p>21 A I recall the discussion about mining starting</p> <p>22 very general about does removing soil and putting it back</p> <p>23 count, and then getting more specific the closer to</p> <p>24 construction we got in terms of what about roads, what</p> <p>25 about borrow pits, what about crushing, and we formed a</p>

<p>Page 30</p> <p>1 opinion on those as they arose.</p> <p>2 Q Okay. So would you say this memo is sort of</p> <p>3 still at the more generic phase and doesn't -- doesn't</p> <p>4 actually get to directly, you know, borrow pits or, you</p> <p>5 know, roads or anything like that? Would you agree with</p> <p>6 that?</p> <p>7 MR. RAY: Object to form.</p> <p>8 A Yeah. I mean, I guess this memo would have been</p> <p>9 earlier and I would have suspected it to be refined over</p> <p>10 time.</p> <p>11 Q (BY MS. NAGLE) So if we go here to the question</p> <p>12 presented, it states "whether a surface owner who</p> <p>13 excavates land for the purpose of construction consistent</p> <p>14 with its surface rights and does not remove the land</p> <p>15 excavated from the property is engaged in mining of the</p> <p>16 mineral state and requires a mining permit," so I'm</p> <p>17 curious whether this language here "does not remove the</p> <p>18 land excavated from the property," is that a detail that</p> <p>19 you or someone else at Tradewind told the folks at Modrall</p> <p>20 Sperling? Is that information that you said, that, you</p> <p>21 know, the plan was not to remove what was excavated from</p> <p>22 the property?</p> <p>23 A I recall early on reviewing a definition of</p> <p>24 mining, and it may have been the one that was in the</p> <p>25 Indian-specific C.F.R. language about what mining was and</p>	<p>Page 32</p> <p>1 A I believe that Wind Capital Group had secured</p> <p>2 wind energy leases that were in full force and effect for</p> <p>3 the entirety of the construction area.</p> <p>4 Q Do you know exactly when those were acquired?</p> <p>5 A As I recall, around the 2011 era.</p> <p>6 Q Okay. And at this time in 2013, did you have an</p> <p>7 understanding of whether the subsurface estate or the</p> <p>8 surface estate there in Osage County -- well, let me --</p> <p>9 let me back that up.</p> <p>10 Did you have an understanding at the time that</p> <p>11 the Osage mineral state had been severed from the surface</p> <p>12 estate?</p> <p>13 A That was one of the first things the land owners</p> <p>14 told me, and, in fact, in 2008, the Minerals Council said</p> <p>15 it as well, although it felt more in context with oil and</p> <p>16 gas at the time.</p> <p>17 Q Uh-huh. And did you have an understanding at</p> <p>18 that time in 2013 that the surface estate was subservient</p> <p>19 to the Osage mineral estate?</p> <p>20 MR. RAY: Object to form.</p> <p>21 A I understand subservient to mean that the</p> <p>22 mineral state has the right to use whatever, the surface,</p> <p>23 to get to its stuff, and the surface also has its own</p> <p>24 rights.</p> <p>25 Q (BY MS. NAGLE) Okay. Looking on page two of the</p>
<p>Page 31</p> <p>1 that if you asked any person off the street, any normal</p> <p>2 human being what mining is, I think they would tell you</p> <p>3 it's, you know, taking materials and taking them</p> <p>4 somewhere, right? So I think this was an attempt to</p> <p>5 rectify whatever we had seen about mining in other</p> <p>6 definitions at the time, but by no means did we have a</p> <p>7 clear understanding of all of the nuance at the time this</p> <p>8 question was posed.</p> <p>9 Q Uh-huh. Fair enough. In terms of consistent</p> <p>10 with its surface rights, what kind of information did</p> <p>11 Tradewind give to the attorneys at Modrall Sperling</p> <p>12 regarding what surface rights the company may have</p> <p>13 acquired for the project?</p> <p>14 MR. RAY: Object to form.</p> <p>15 A I don't believe we sent them wind energy leases.</p> <p>16 Certainly leases were in place. They may have had access</p> <p>17 to them through a data room. I recall discussions around</p> <p>18 wind being a surface right generally in Oklahoma. Since</p> <p>19 DFRG was involved, we had done much research. You know,</p> <p>20 there's oil and gas activity all around here, and</p> <p>21 there's -- you know, much research was conducted between</p> <p>22 Tradewind and DFRG specific to surface rights.</p> <p>23 Q (BY MS. NAGLE) Do you recall what the status of</p> <p>24 the surface rights were at the time of the writing of this</p> <p>25 memo?</p>	<p>Page 33</p> <p>1 memo which is Bates stamped 415, here under the heading</p> <p>2 analysis, it states, "The Osage Tribe has indicated that</p> <p>3 it will assert Tradewinds Energy must receive a mining</p> <p>4 permit from the Osage Minerals Council in order to</p> <p>5 construct and operate the wind farm on the grounds that</p> <p>6 the excavation and construction and permanent placement of</p> <p>7 the towers constitutes mining of the Osage minerals</p> <p>8 estate."</p> <p>9 Is this -- earlier we discussed that Tradewind</p> <p>10 was copied on a communication from the Osage Minerals</p> <p>11 Council to Wind Capital Group stating that a permit would</p> <p>12 be necessary. Is this a reference to that communication</p> <p>13 you mentioned earlier?</p> <p>14 MR. RAY: Object to form.</p> <p>15 A I believe that answer to be yes.</p> <p>16 Q (BY MS. NAGLE) Okay. And do you recall roughly</p> <p>17 when that communication would have been received?</p> <p>18 Obviously sometime before October 31, 2013. Do you recall</p> <p>19 exactly when?</p> <p>20 A I do not. Not much longer before that. Not</p> <p>21 within six months.</p> <p>22 Q Okay. And just a little bit below that, it</p> <p>23 says, "Tradewinds does not dispute that The Lease does not</p> <p>24 provide it with the right to conduct mining or other</p> <p>25 mineral extraction." When it says "The Lease", and "The</p>

<p>Page 34</p> <p>1 Lease" is capitalized, do you understand that to be a</p> <p>2 lease with surface land owners?</p> <p>3 A Yes.</p> <p>4 Q Okay. It says here, "Tradewinds, however, is</p> <p>5 not conducting mining. To the extent any soil or other</p> <p>6 subsurface material is touched by Tradewinds, it is merely</p> <p>7 incidental to Tradewind's construction of its approved</p> <p>8 wind farm." What is your understanding of "merely</p> <p>9 incidental" as it relates to the subsurface material and</p> <p>10 use of it?</p> <p>11 A We thought about it much like building a</p> <p>12 basement for a house which is you have to move dirt out of</p> <p>13 the way to build a basement into the ground but you pile</p> <p>14 it back up on the sides, and that -- yeah. You have --</p> <p>15 you couldn't not touch it in order to do the thing you</p> <p>16 wanted to do, but, in fact, you still had to buy the</p> <p>17 concrete for your basement foundation, you still had to do</p> <p>18 the excavation, and, yeah, that was the concept.</p> <p>19 Q Okay. And in that concept of the touching the</p> <p>20 subsurface material being merely incidental, at that time</p> <p>21 in October 2013, was it envisioned that using a rock</p> <p>22 crusher would also be merely incidental?</p> <p>23 A I do not recall conversations about rock</p> <p>24 crushers at this stage.</p> <p>25 Q Okay. So at the very end of this third</p>	<p>Page 35</p> <p>1 part 246 and 25 CFR part 224 weren't incredibly clear with</p> <p>2 regards to what exactly what would constitute mining. Do</p> <p>3 you recall if there were any analogous statutes or</p> <p>4 regulations that you all looked at with Modrall Sperling</p> <p>5 at that time that you thought might inform your</p> <p>6 interpretation of these two regulations?</p> <p>7 A I mean, that -- yes. That's what the memo is,</p> <p>8 right, and ultimately the conclusion is what we at</p> <p>9 Tradewind cared about and what we relied on.</p> <p>10 Q Sure. So going back down here to this case,</p> <p>11 Watt v. Western Nuclear, which is discussing the</p> <p>12 Stock-Raising Homestead Act, there's a quote here from the</p> <p>13 Supreme Court that notes -- I'm starting at kind of the</p> <p>14 top of page 4 -- that "one of the overriding purposes of</p> <p>15 the act was to permit settlers to establish and maintain</p> <p>16 successful homesteads. There is force to the argument</p> <p>17 that this purpose would be defeated if the owner of the</p> <p>18 surface estate were unable to use reserved minerals, even</p> <p>19 where such use was essential for stock raising and raising</p> <p>20 crops."</p> <p>21 Did you have an understanding in reading this</p> <p>22 memo from Modrall Sperling what the purpose of the</p> <p>23 Stock-Raising Homestead Act was?</p> <p>24 MR. RAY: Object to form.</p> <p>25 A I did not.</p>
<p>Page 35</p> <p>1 paragraph here, let's see -- okay. Sorry. Let me --</p> <p>2 okay. So looking back up here, there's a reference to 25</p> <p>3 C.F.R. part 226 and 25 C.F.R. part 214, and then the memo</p> <p>4 states, "No provisions of either of these sections provide</p> <p>5 information on whether surface use consistent with a</p> <p>6 surface lease or license is considered mining such that a</p> <p>7 permit or lease is necessary." What was your</p> <p>8 understanding of what "consistent with a surface lease or</p> <p>9 license" meant for purposes of this memo?</p> <p>10 A Yeah. I mean, my understanding of what this</p> <p>11 means is that the language in those sections of C.F.R.</p> <p>12 was -- didn't tell us exactly whether or not what we were</p> <p>13 doing, you know, was, you know, correct.</p> <p>14 Q Okay. Looking at pages 3 to 4, I see here that</p> <p>15 there is a citation to -- I'm sorry. My apologies. Back</p> <p>16 up to 3, Bates stamp 416, in reference to the Supreme</p> <p>17 Court's decision in Watt v. Western Nuclear. Do you see</p> <p>18 that at the bottom of page 3?</p> <p>19 A I do.</p> <p>20 Q And it's referencing the Stock-Raising Homestead</p> <p>21 Act. Do you recall any discussions around the</p> <p>22 Stock-Raising Homestead Act at this time?</p> <p>23 A I do not.</p> <p>24 Q Okay. I know you said that these two provisions</p> <p>25 that we were talking about earlier, specifically 25 C.F.R.</p>	<p>Page 37</p> <p>1 Q (BY MS. NAGLE) Okay. Did you or your attorneys</p> <p>2 ever undertake to discern the congressional purpose behind</p> <p>3 the Osage Allotment Act which placed the mineral estate in</p> <p>4 trust for the Osage Nation?</p> <p>5 MR. RAY: Object to form.</p> <p>6 A I personally did not. You'd have to ask the</p> <p>7 lawyers what their thought process was.</p> <p>8 Q (BY MS. NAGLE) Okay. Do you know if any -- you</p> <p>9 said I'd have to ask the attorneys. You don't know</p> <p>10 whether or not Lynn Slade or Bill Scott or Sarah Stevenson</p> <p>11 who wrote this memo ever undertook to understand the</p> <p>12 overriding purpose of the Osage Allotment Act. Is that</p> <p>13 correct?</p> <p>14 MR. RAY: Object to form.</p> <p>15 A That's correct.</p> <p>16 Q (BY MS. NAGLE) Okay. I see here, you know, it's</p> <p>17 talking about the purpose of the Stock Head -- sorry --</p> <p>18 Stock-Raising Homestead Act, and then it notes that in</p> <p>19 this particular example of mining in a Supreme Court case,</p> <p>20 the court found, quote, you know, "The purpose would be</p> <p>21 defeated if the owner of the surface estate were unable to</p> <p>22 use reserved minerals, even where such use was essential</p> <p>23 for stock raising and raising crops." Did you ever</p> <p>24 understand stock raising or raising crops to be a use for</p> <p>25 the minerals that were taken in this case from the Osage</p>

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1 mineral estate?

2 A We --

3 MR. RAY: Object to form.

4 A Our opinion was we weren't taking minerals.

5 This portion of research, as I recall it, was tangential,

6 one data point, and that we were not stock raising, as you

7 said, but we were also not taking minerals.

8 **Q (BY MS. NAGLE) Okay. If you were not taking the**

9 **minerals, and this is, of course, the Watt v. Western**

10 **Nuclear case about what minerals were taken, do you have**

11 **an understanding of why this particular Supreme Court case**

12 **was included here in this memo?**

13 A I would go back to my prior comment that the

14 definition in the specific references was unclear and that

15 you can see many of these are tangential in the way that a

16 lawyer would typically go and find anything that might

17 possibly apply for discussion purposes.

18 **Q Okay. So what I see here, the next case that's**

19 **discussed is Rosette, which is a district court case from**

20 **the District of New Mexico, and this case, of course,**

21 **refers back to the Supreme Court case we were just**

22 **discussing, Watt v. Western Nuclear, and says, "Thus,**

23 **while Rosette might be able to use the heated water from**

24 **geothermal resources under its property for use in**

25 **watering livestock or irrigating forage crops and remain**

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1 within the patent, the commercial activity of heating

2 ground greenhouses to produce roses for sale falls outside

3 the patent. Therefore, Rosette, by virtue of being the

4 surface water, does not acquire the right to use the

5 geothermal resources in well 55-7 for use in providing

6 heat for its commercial greenhouse operation. The right

7 to the resources remains in the federal government."

8 Do you have an understanding for purposes of

9 this memo what the distinction is between the use of the

10 resources for stock raising -- you know, stock raising and

11 raising crops versus the operation of a commercial

12 enterprise like a greenhouse? Do you have an

13 understanding of that distinction?

14 MR. RAY: Form.

15 A I recall both of these being -- trying to

16 discover the nuance of what counts as a resource.

17 Geothermal, in your example here, something we obviously

18 weren't relying on or weren't using. So I think they were

19 helpful to color what our activities were and how they

20 might relate to things that had already been done.

21 **Q (BY MS. NAGLE) Uh-huh. Did you see this case,**

22 **Rosette, as related for opining at all on the nature of**

23 **the operation, the fact that the operation was commercial**

24 **in nature?**

25 MR. RAY: Object to form.

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1 A Yeah. We didn't discuss that as a key point.

2 **Q (BY MS. NAGLE) Okay. And when you say "we**

3 **didn't discuss that", do you -- are you saying you didn't**

4 **discuss it with the attorneys who worked on this memo?**

5 A I'm saying that the memo discussions we had

6 afterwards, the idea that because one thing was commercial

7 and what we were doing was commercial is -- we didn't see

8 as a point of discussion, yes.

9 **Q Okay.**

10 A It was around what was the mineral interaction

11 was most of the discussion.

12 **Q Okay. Lower on page 4, it states here, "The**

13 **mineral rights reserved under the Stock-Raising Homestead**

14 **Act are done so in language similar to that of the Osage**

15 **Allotment Act." Do you have an understanding of what that**

16 **sentence signifies for purposes of this memorandum?**

17 MR. RAY: Object to form.

18 A I have to again say that it was in the effort to

19 find things that were close to try and understand better

20 what the rules might be and what the law might be.

21 **Q (BY MS. NAGLE) Okay. If I moved on to page 6,**

22 **down here this is Bates stamped 419, I notice there's a**

23 **reference to Mullins, a circuit case, and also a reference**

24 **to the Supreme Court of Washington, Saddle Mountain**

25 **Minerals. Here, let's see. Mullins is concluding in the**

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1 forth circuit case that, "The mineral owner is entitled to

2 compensation based upon the value of" -- sorry -- "the

3 value in situ" -- S-I-T-U -- "of the coal displaced." Do

4 you see that?

5 A I do.

6 **Q And I see that Saddle Mountain says, "However,**

7 **even if a surface owner can burden a mineral owner's**

8 **right, it does not mean the surface owner can export**

9 **minerals without any compensation to the mineral owner."**

10 **to your knowledge, has the Osage Minerals Council ever**

11 **been compensated for the minerals that were taken from the**

12 **Osage Minerals Estate to construct the Osage Wind Farm?**

13 MR. RAY: Object to form.

14 A To my knowledge, no compensation has been paid,

15 but also no materials were taken.

16 **Q (BY MS. NAGLE) And so to this day, your**

17 **understanding is still that no materials were taken at the**

18 **Osage Wind Farm. Is that correct?**

19 A To our understanding of what mining was, we had

20 not removed viable materials and commercialized them in

21 any way. We still believe that to be true.

22 **Q And is that understanding based on this memo?**

23 A Yes.

24 **Q Are you aware that in 2017, the tenth circuit**

25 **concluded that both federal law and Osage law required**

<p>Page 42</p> <p>1 Defendants Enel and everyone else to get a permit for the</p> <p>2 mining activities that took place at the Osage Wind Farm?</p> <p>3 MR. RAY: Object to form.</p> <p>4 A At that point, the project wasn't within my</p> <p>5 purview, but I am aware that happened, yes.</p> <p>6 Q (BY MS. NAGLE) Does that decision from the tenth</p> <p>7 circuit change your viewpoint at all on whether or not</p> <p>8 some sort of compensation is due to the Osage Minerals</p> <p>9 Council for the minerals taken, or do you still hold the</p> <p>10 same position that no minerals were taken?</p> <p>11 MR. RAY: Object to form.</p> <p>12 A I still hold the position that no minerals were</p> <p>13 taken.</p> <p>14 Q (BY MS. NAGLE) Okay. Let's see. Moving along.</p> <p>15 So I think we discussed this a little bit earlier. You</p> <p>16 said you -- so I asked you if you had any responsibilities</p> <p>17 with regards to the transaction where Tradewind purchased</p> <p>18 the Wind Farm project from Osage Wind Capital Group, and</p> <p>19 you said you helped prepare schedules. Is that correct?</p> <p>20 A That is correct.</p> <p>21 Q Do you recall who in 2013 on the Tradewind side</p> <p>22 would have been involved in that transaction?</p> <p>23 A It would have been Rob Freeman, Matt Gilhousen,</p> <p>24 and Geoff Coventry.</p> <p>25 Q Okay. And do you recall on the Wind Capital</p>	<p>Page 44</p> <p>1 And I see here there's a definition of governmental</p> <p>2 authority, meaning any United States federal, state,</p> <p>3 local, or governmental authority, regulatory body,</p> <p>4 political subdivision, et cetera, et cetera. I'll give</p> <p>5 you a second to read that definition.</p> <p>6 A Okay.</p> <p>7 Q Under this definition, I know you said you met</p> <p>8 with the mayor, would the local city there -- actually, to</p> <p>9 back up for a second, was that the mayor of Pawhuska?</p> <p>10 A The mayor of Pawhuska, and then the -- there's a</p> <p>11 governing body, I can't recall the name of it, but the</p> <p>12 county has conditional use permit process. That would</p> <p>13 have been the primary local authority.</p> <p>14 Q Okay. So in terms of the city government of</p> <p>15 Pawhuska, would you understand that government to fall</p> <p>16 under this definition of governmental authority here?</p> <p>17 MR. RAY: Object to form.</p> <p>18 A Having not written it, my understanding, it</p> <p>19 looks to me like it would.</p> <p>20 Q (BY MS. NAGLE) Okay. What about the county that</p> <p>21 you -- you know, like the county officials that you met</p> <p>22 with? Would the county government fit underneath this</p> <p>23 definition of governmental authority?</p> <p>24 MR. RAY: Object to form.</p> <p>25 A Same answer. It looks like it would.</p>
<p>Page 43</p> <p>1 Group side who would have been involved in that</p> <p>2 transaction?</p> <p>3 A I don't remember all the names. I know David</p> <p>4 Boyce was the CEO and was certainly involved, and they had</p> <p>5 their general counsel, had a general counsel that would</p> <p>6 have been involved.</p> <p>7 Q Okay. Great. So I am -- I am now going to show</p> <p>8 you what was actually entered yesterday as Exhibit 78. So</p> <p>9 for the court report's information, it doesn't have -- we</p> <p>10 don't have the stamp yet, but this is Exhibit 78. It's</p> <p>11 Bates stamped Osage Wind 021248, and I will represent that</p> <p>12 it is the membership interest purchase agreement between</p> <p>13 Tradewind Energy, who is the purchaser, and that Wind</p> <p>14 Capital Group, who is the seller. Mr. Weigel, are you</p> <p>15 familiar with this document at all?</p> <p>16 A I am aware that it existed. I was not part of</p> <p>17 the preparation or execution of this document.</p> <p>18 Q Okay.</p> <p>19 A So I wouldn't be familiar with the specific</p> <p>20 language and terms.</p> <p>21 Q Okay. Fair enough. So you had no role in</p> <p>22 shaping or in forming the creation of this document?</p> <p>23 A I had no role.</p> <p>24 Q Fair enough. I am going to look at one page in</p> <p>25 here, and that's the page that ends in Bates stamp 21251.</p>	<p>Page 45</p> <p>1 Q (BY MS. NAGLE) Okay. I note that at the end of</p> <p>2 it, this says, "provided, however, that for the avoidance</p> <p>3 of doubt, no Native American tribe, nation, entity, body,</p> <p>4 organization, governmental or other authority or any</p> <p>5 agency, division, ministry, instrumentality, or authority</p> <p>6 thereof shall be considered a governmental authority for</p> <p>7 any purpose here under." With that language here in this</p> <p>8 definition, would you understand the Osage Minerals</p> <p>9 Council to be a governmental authority?</p> <p>10 A They appear to be exclusively removed from this</p> <p>11 definition, although I recognize, you know, they clearly</p> <p>12 are the normal human definition. Per the document --</p> <p>13 Q Sure.</p> <p>14 A -- they're excluded from this definition.</p> <p>15 Q Did -- and you stated before, did anyone working</p> <p>16 on this transaction or this document ever discuss with you</p> <p>17 this decision to exclude Native American tribes from the</p> <p>18 definition of governmental authority?</p> <p>19 A Not at all.</p> <p>20 Q I'm sorry. Did you -- I didn't hear it.</p> <p>21 A No was the answer.</p> <p>22 Q No. Thank you. So with that my guess is the</p> <p>23 answer might be no, but I'll ask you none the less. So do</p> <p>24 you have any understanding of the purpose of this</p> <p>25 exclusion here in this definition of governmental</p>

<p>Page 46</p> <p>1 authority?</p> <p>2 MR. RAY: Object to form.</p> <p>3 A I do not, and I don't want to guess.</p> <p>4 Q (BY MS. NAGLE) Fair enough. I don't want you to</p> <p>5 guess either, so I don't know is a very fair answer.</p> <p>6 So I will next show you what has already</p> <p>7 previously in this litigation been entered as Exhibit 52.</p> <p>8 This does actually have the benefit of a court reporter's</p> <p>9 stamp on it from a prior deposition, and it is Bates</p> <p>10 stamped Osage Wind-035610, and this is the Osage Wind</p> <p>11 project amended and restated balance of plant engineering</p> <p>12 procurement and construction contract by and between Osage</p> <p>13 Wind, LLC, and IEA Renewable Energy, dated April 11, 2013.</p> <p>14 Have you seen this document, Mr. Weigel?</p> <p>15 A I would not have been involved in preparing</p> <p>16 this. I don't believe I have seen it before in its</p> <p>17 entirety.</p> <p>18 Q Okay. Do you have an understanding -- and this</p> <p>19 is dated April 11, 2013. Do you have an understanding of</p> <p>20 when Osage Wind, LLC, decided to engage with IEA for</p> <p>21 purposes of construction of the wind farm?</p> <p>22 A That is a good question. It was involved in</p> <p>23 early discussions with IEA specific to this project, as is</p> <p>24 typical for a project near construction. Trying to sign</p> <p>25 this contract that, you know, forms the basis of what's</p>	<p>Page 48</p> <p>1 A It would have been after a project goes into</p> <p>2 construction. It would have been the ultimate</p> <p>3 owner-operator, which would have been Enel.</p> <p>4 Q Okay. Okay. So now I will go to Bates stamp</p> <p>5 627. And here we have -- again on Bates stamp 35627 we</p> <p>6 have another definition of governmental authority here,</p> <p>7 and this one is a bit shorter than the last one we saw in</p> <p>8 the membership interest purchase agreement. This one says</p> <p>9 governmental authority means, "Any court, tribunal,</p> <p>10 arbiter, authority, agency, commission, council, official,</p> <p>11 or other instrumentality of the United States, or any</p> <p>12 foreign country, or any domestic or foreign state, county,</p> <p>13 city, school district, or other political subdivision.</p> <p>14 For avoidance of doubt, the definition of governmental</p> <p>15 authority shall not include the Osage Nation or any court,</p> <p>16 tribunal, arbiter, agency, commission, council, official,</p> <p>17 or other instrumentality thereof." Do you -- were you</p> <p>18 involved in the drafting of this definition of</p> <p>19 governmental authority?</p> <p>20 A I was not.</p> <p>21 Q Did anyone from Osage Wind or any of the</p> <p>22 affiliated entities, whether that's the Tradewind or EGPNA</p> <p>23 or Enel Kansas, did anyone from any of those entities ever</p> <p>24 consult with you regarding whether or not to exclude Osage</p> <p>25 Nation from the definition of governmental authority?</p>
<p>Page 47</p> <p>1 going to be developed, how's it going to be done, who's</p> <p>2 going to do it, it would have been normal to be involved</p> <p>3 in that as the project developer to make sure the scope</p> <p>4 was right, and so I was certainly at meetings with IEA</p> <p>5 prior to this. I would guess it was within a few months,</p> <p>6 though. I mean, within 2013.</p> <p>7 Q Okay. So if we look at the page ending in</p> <p>8 5620 -- oh, wow. There we go. 5620, it notes that Osage</p> <p>9 Wind is the owner and IEA is the contractor. Do you -- do</p> <p>10 you see that there?</p> <p>11 A Yes.</p> <p>12 Q Okay. And then on Bates stamp ending -- hold</p> <p>13 on. Let me get to this page. Okay. So on this page --</p> <p>14 so with the understanding that Osage Wind is the owner,</p> <p>15 I'm on page Bates stamp 35672, it states that the owner's</p> <p>16 manager -- "The owner shall appoint a representative to</p> <p>17 act as the manager and coordinator of this contract on</p> <p>18 owner's behalf." Do you know who Osage Wind appointed to</p> <p>19 be the manager of this contract?</p> <p>20 MR. RAY: Object to form.</p> <p>21 A I do not.</p> <p>22 Q (BY MS. NAGLE) Okay.</p> <p>23 A Typically, that would have been outside of the</p> <p>24 scope of Tradewind.</p> <p>25 Q Okay.</p>	<p>Page 49</p> <p>1 A They did not.</p> <p>2 Q Do you have any idea which attorneys would have</p> <p>3 advised Osage Wind on the decision to exclude Osage Nation</p> <p>4 from the definition of governmental authority?</p> <p>5 MR. RAY: Object to form.</p> <p>6 A If this was executed by Tradewind, which I</p> <p>7 believe it was, then it would have been our -- DFRG, which</p> <p>8 would have been Steve Willman at the time.</p> <p>9 Q (BY MS. NAGLE) Okay. And -- all right. So let</p> <p>10 me just see here. All right. Let's see. I'm just seeing</p> <p>11 if I have any more questions about this document, and I</p> <p>12 think that I do not. All right. So I think we can -- we</p> <p>13 can stop looking at that document.</p> <p>14 And now I am going to show you what was</p> <p>15 yesterday entered as Exhibit 79. And hold on just a</p> <p>16 second. Let me share my screen. So this document here</p> <p>17 yesterday was entered as Exhibit 79. We don't have the</p> <p>18 court reporter's stamp just yet. It is Bates stamped</p> <p>19 Osage Wind-021119, and I will represent to you that it is</p> <p>20 the membership interest purchase agreement between Enel</p> <p>21 Kansas and Tradewind Energy dated September 17, 2014. Are</p> <p>22 you familiar with this document, Mr. Weigel?</p> <p>23 A Similar to the others, I would not have been</p> <p>24 involved in the direct preparation of the language that is</p> <p>25 contained in it.</p>

<p>Page 50</p> <p>1 Q Do you have an understanding of this document's</p> <p>2 purpose?</p> <p>3 A Yes. At this point in time, Tradewind and Enel</p> <p>4 had a relationship that required membership and purchase</p> <p>5 agreements at the time projects went into construction,</p> <p>6 prior to construction, and that would have happened eight</p> <p>7 to ten times by this time.</p> <p>8 Q Okay. Moving down to what is ending in Bates</p> <p>9 stamp 21127. Let me see if I can -- there we go. That's</p> <p>10 better. Here we have yet another definition of</p> <p>11 governmental authority. This time it is defined as</p> <p>12 meaning, "Any national, tribal, state, or local</p> <p>13 government," and I will represent to you that I don't see</p> <p>14 any language here that excludes the Osage Nation or Native</p> <p>15 American tribes. Would you agree that this definition --</p> <p>16 in your -- let me scratch that.</p> <p>17 Is it your understanding that the Osage Nation</p> <p>18 and the Osage Minerals Council under this definition would</p> <p>19 constitute a governmental authority?</p> <p>20 MR. RAY: Object to form.</p> <p>21 A I was not involved in the preparation of this</p> <p>22 language. My non-lawyer read of this is that the tribe is</p> <p>23 not excluded.</p> <p>24 Q (BY MS. NAGLE) Okay. And what is your</p> <p>25 understanding of why the contracts that Tradewind and</p>	<p>Page 52</p> <p>1 about the legal research they were conducting with regards</p> <p>2 to whether or not a mining permit was necessary?</p> <p>3 MR. RAY: Object to form.</p> <p>4 A I was party to conversations where both of those</p> <p>5 individuals were on the phone discussing said minerals.</p> <p>6 Q (BY MS. NAGLE) And would those discussions have</p> <p>7 taken place in 2013?</p> <p>8 A Yes. Directly after the receipt of the memo,</p> <p>9 there would have been calls including Steve and Modrall</p> <p>10 Sperling.</p> <p>11 Q So I -- just to check in, I'm probably -- well,</p> <p>12 it seems like I'm about halfway through some of the</p> <p>13 questions I have, but I don't know exactly how much longer</p> <p>14 it will take. We've been going for an hour and 20</p> <p>15 minutes. I can keep going, or does anyone need a break at</p> <p>16 this point?</p> <p>17 MR. RAY: Let's take a break --</p> <p>18 MR. FIELDS: We'll take a break.</p> <p>19 MR. RAY: -- for the record, if you don't mind.</p> <p>20 MS. NAGLE: Yeah. Does -- do we want five or</p> <p>21 ten?</p> <p>22 MR. FIELDS: Ten.</p> <p>23 MR. RAY: Ten.</p> <p>24 MS. NAGLE: All right. I hear some votes for</p> <p>25 ten. All right. Ten minutes. Let's go off the record,</p>
<p>Page 51</p> <p>1 Osage Wind and Enel were working on in 2013 excluded Osage</p> <p>2 Nation as a governmental authority and then in 2014</p> <p>3 included Osage Nation as a governmental authority?</p> <p>4 MR. RAY: Object to form.</p> <p>5 A I do not know.</p> <p>6 Q (BY MS. NAGLE) Do you have any idea who would</p> <p>7 know the reason for this change in language?</p> <p>8 A Given this contract was directly between Enel</p> <p>9 and Tradewinds, it would have been head counsel for the</p> <p>10 Enel side, as well as on the Tradewind side, three</p> <p>11 original partners, as I mentioned. I would suspect that</p> <p>12 Matt Gilhousen would have some input, and then, again, our</p> <p>13 direct lawyers, Steve Willman and DFRG Law Firm.</p> <p>14 Q Okay. And is there anyone specifically at DFRG</p> <p>15 that -- a name of someone that would have, you think,</p> <p>16 worked on this sort of language?</p> <p>17 A The memos were usually in the purview of Steve</p> <p>18 Willman.</p> <p>19 Q Okay. And do you know -- so to the best of your</p> <p>20 knowledge, Steve Willman would have worked on this</p> <p>21 contractual language. Is that correct?</p> <p>22 MR. RAY: Object to form.</p> <p>23 A I -- I expect he would have.</p> <p>24 Q (BY MS. NAGLE) Do you know if Steve Willman ever</p> <p>25 had any conversations with the team at Modrall Sperling</p>	<p>Page 53</p> <p>1 please.</p> <p>2 THE VIDEOGRAPHER: We are off the record at</p> <p>3 10:19.</p> <p>4 (Break taken.)</p> <p>5 THE VIDEOGRAPHER: We are back on the record at</p> <p>6 10:33.</p> <p>7 MR. RAY: I'll just note that co-counsel Sarah</p> <p>8 Stevenson has joined the deposition. Please proceed.</p> <p>9 Q (BY MS. NAGLE) Okay. Thank you. So jumping</p> <p>10 right back into it. So Mr. Weigel, earlier we -- we've</p> <p>11 talked about a lot of different terms today related to</p> <p>12 wind farms, and I just wanted to back up for a second and</p> <p>13 ask, in terms of laying foundation for a wind turbine,</p> <p>14 what -- what is a barrow pit?</p> <p>15 A As a mechanical engineer, I think you probably</p> <p>16 should ask a civil engineer that question --</p> <p>17 Q Okay.</p> <p>18 A But since as a developer, a lot of your role as</p> <p>19 a developer is to explain to the land owners what</p> <p>20 construction's going to be like on their property, so I'm</p> <p>21 reasonably qualified to answer that question. A barrow</p> <p>22 pit would be a time when either because the -- mostly</p> <p>23 because the slope is too steep, you might need to move</p> <p>24 some dirt from one place to another place in order to</p> <p>25 level things out, essentially.</p>

<p>Page 54</p> <p>1 Q Okay. And is that also what is referred to 2 sometimes when folks say they need to balance the site or 3 is that different?</p> <p>4 A No. I think balance a site would normally refer 5 to the remaining steps of construction. So it's -- I 6 think it's part of the terms of the OP contract, I would 7 expect -- EPC contract.</p> <p>8 Q And what is the EPC contract?</p> <p>9 A Oh, engineer, procure, construct.</p> <p>10 Q Okay. And in terms of a contract, who is that 11 between?</p> <p>12 A It would be similar in form to the IEA contract 13 that you had put up there.</p> <p>14 Q I see. So is the IEA contract we looked at an 15 example of an EPC contract?</p> <p>16 A Yeah. I think it's maybe just a different label 17 for slightly different responsibilities, depending on, you 18 know, what it is that they're doing at the site.</p> <p>19 Q Okay. And how would you define backfill?</p> <p>20 A Backfill is the replacement of materials from -- 21 the turbine foundation is the only place on site that we 22 would use that term backfill.</p> <p>23 Q Okay. And typically on a wind farm project, 24 where does backfill come from?</p> <p>25 A Backfill is always the dirt that came out of the</p>	<p>Page 56</p> <p>1 the Tradewind ownership period of Osage Winds, and it 2 would have been myself, Matt Gilhousen, and Jennifer Dean, 3 the permitting specialist at Tradewind, who would have 4 initiated those conversations. I would have expected Joan 5 to be involved.</p> <p>6 Q Yeah. Okay. All right. So now I am going to 7 introduce what should be Exhibit 90 in this litigation. 8 So Exhibit 90, Bates stamped Osage Wind Priv-000427, and I 9 can -- at the top, this is an email from Darren Neil to 10 Lynn Slade, and, actually -- and your copied. You're 11 copied. But I can start at the bottom, too, if you'd like 12 to see all the way.</p> <p>13 (WHEREUPON, Exhibit 90 was marked for 14 identification.)</p> <p>15 A Yeah. That would be helpful to review them, the 16 chain.</p> <p>17 Q Yeah. So it looks like it starts here from an 18 email from Ian Shavitz, and this is from October 2013. 19 And are you -- have you seen this email from Ian Shavitz 20 before?</p> <p>21 A I don't recall it directly.</p> <p>22 Q But this is in October of 2013. Would -- could 23 this have been the instance in which you mentioned a 24 letter from the Osage Minerals Council to Tradewind and 25 Wind Capital Group? Could this have been this letter?</p>
<p>Page 55</p> <p>1 hole.</p> <p>2 Q Always?</p> <p>3 A The material that came out of the hole.</p> <p>4 Q Okay.</p> <p>5 A I've never at any site we've worked on purchased 6 materials to backfill for turbines.</p> <p>7 Q Okay. So you personally have never worked on a 8 project where backfill is purchased off site. Is that 9 correct?</p> <p>10 A That's correct.</p> <p>11 Q Was that option here ever contemplated?</p> <p>12 A We did contemplate it as part of the -- you 13 know, starting from the original memo and moving forward, 14 as an option. We thought that the -- A, it wasn't 15 necessary; B, the environmental impacts of piles of dirt 16 laying around would put us out of compliance for other 17 runoff and, you know, environmental compliance type 18 issues.</p> <p>19 Q And in terms of that runoff and other 20 environmental compliance issues that would have occurred 21 from purchasing off site backfill material, who was 22 responsible for that analysis? Would that have been Joan 23 Heredia or someone else?</p> <p>24 A I would guess, if we're talking about the time, 25 those conversations were likely to have happened during</p>	<p>Page 57</p> <p>1 A It could have been. I would have to look at it.</p> <p>2 Q Okay. Sure. And then who's -- who's David 3 Boyce?</p> <p>4 A I believe he was the CEO of Wind Capital Group.</p> <p>5 Q Okay. And who's George Knapp?</p> <p>6 A George Knapp was their head of internal counsel.</p> <p>7 Q Oh, it says right here. Okay. And move up 8 here, it looks like you respond on October 10, 2013, "I 9 suppose I shouldn't let things like this surprise me." 10 What did you mean by, you know, "I suppose I shouldn't let 11 things like this surprise me"?</p> <p>12 A Yeah. The environment at the Mustang Run and 13 Osage Wind project was contentious on many fronts, and 14 this was one of the later instances where we felt the 15 Minerals Council or the tribe was attempting to make a new 16 claim for another -- yet another thing; previously it had 17 been burying beetles, previously the conditional use 18 permitting process, previously bald eagles. Really, from 19 the initial time that I met with the Minerals Council, it 20 felt like -- it felt like to me it was attempted -- 21 attempts to block the project from every possible way.</p> <p>22 Q Did -- did that make it hard to take their 23 statement that a permit was necessary seriously?</p> <p>24 MR. RAY: Object to form.</p> <p>25 A No. Not at all.</p>

<p>Page 58</p> <p>1 Q (BY MS. NAGLE) You took it seriously?</p> <p>2 A I did.</p> <p>3 MR. RAY: Object to form.</p> <p>4 Q (BY MS. NAGLE) But you -- and you were not</p> <p>5 surprised by it?</p> <p>6 A Can you restate that? Sorry.</p> <p>7 Q So I'm just trying to understand, you say -- we</p> <p>8 looked at this communication from Ian Shavitz, the</p> <p>9 attorney for the Osage Minerals Council, in October of</p> <p>10 2013 with regards to mining on the Osage mineral estate,</p> <p>11 and your response is, "I suppose I shouldn't let things</p> <p>12 like this surprise me." So I guess really I should ask</p> <p>13 are you saying that you were surprised at this time or you</p> <p>14 were not surprised to get this communication from the</p> <p>15 Osage Minerals Council?</p> <p>16 A I was not surprised. It meant the pattern of</p> <p>17 I'll call them "legal attacks" that we had been</p> <p>18 experiencing for years.</p> <p>19 Q Okay. Let's move to our next exhibit. Just</p> <p>20 give me one moment, and we'll pull that up. This exhibit</p> <p>21 yesterday was entered as Exhibit 81, and I can represent</p> <p>22 to you that this was filed by defendants in this</p> <p>23 litigation. Exhibit 81 here was actually Exhibit 4 to</p> <p>24 defendant's response to plaintiff's, the United States</p> <p>25 Plaintiff's motion for preliminary injunction. It is on</p>	<p>Page 60</p> <p>1 the body of the email -- or sorry -- the memo. Now, it</p> <p>2 does look to me that there are some differences between</p> <p>3 this memo and the prior version that we've looked at in</p> <p>4 October -- that was dated October 2013, Exhibit 36. Do</p> <p>5 you understand the reasoning behind the difference -- the</p> <p>6 differences or the changes that were made?</p> <p>7 A I was uninvolved in the changes or any changes</p> <p>8 that were made. As I said earlier, I suspect these</p> <p>9 things, as you learn more, continued to be improved. I</p> <p>10 would have that expectation, but I couldn't tell you the</p> <p>11 differences off the top of my head.</p> <p>12 Q Did -- between October 2013 and October 2014,</p> <p>13 did anyone at any of the Enel companies or Tradewind ask</p> <p>14 the attorneys at Modrall Sperling to update their legal</p> <p>15 analysis?</p> <p>16 MR. RAY: Object to form.</p> <p>17 A I personally did not. I cannot tell you if</p> <p>18 anyone else did.</p> <p>19 Q (BY MS. NAGLE) So you're unaware?</p> <p>20 A Yeah.</p> <p>21 Q You're unaware if anyone asked the attorneys at</p> <p>22 Modrall Sperling to update their legal analysis?</p> <p>23 A That's correct.</p> <p>24 Q Okay. I will note for just a second, if I --</p> <p>25 okay. Exhibit 36. Okay. So if we look back at</p>
<p>Page 59</p> <p>1 the docket, publicly on the court's docket as 17-4, and</p> <p>2 I'm just going to move it down a little bit so you can see</p> <p>3 this is the cover email that accompanies what is the</p> <p>4 attachment. It's an email to Lynn Slade to Superintendent</p> <p>5 Robin Phillips at the BIA dated October 21, 2014. I'll</p> <p>6 give you a moment to look at that.</p> <p>7 A Okay.</p> <p>8 Q All right. And then the attachment here is this</p> <p>9 version of a Modrall Sperling memorandum, and I will note</p> <p>10 that it is to Alan Woodcock from Lynn Slade and William</p> <p>11 Scott. Do you know who Alan Woodcock is?</p> <p>12 A I do not.</p> <p>13 Q Okay. And I think you mentioned before, Lynn</p> <p>14 Slade is an attorney that represents Enel Kansas, EGPNA,</p> <p>15 and Osage Wind at Modrall Sperling. Is that correct?</p> <p>16 A I believe he was hired under Tradewind Energy,</p> <p>17 but he --</p> <p>18 Q Okay.</p> <p>19 A -- I think also represented those entities you</p> <p>20 had said.</p> <p>21 Q Okay. And William Scott. Do you know who</p> <p>22 William Scott is?</p> <p>23 A I presume him to be the same Bill Scott that was</p> <p>24 prior on this.</p> <p>25 Q And this is dated October 20, 2014, and here's</p>	<p>Page 61</p> <p>1 Exhibit 36, right, there's this language here in</p> <p>2 Exhibit 36 that says, "The Osage tribe has indicated that</p> <p>3 it will assert Tradewinds Energy must receive a mining</p> <p>4 permit from the Osage Minerals Council in order to</p> <p>5 construct and operate the wind farm." I have searched</p> <p>6 high and low in this version of the memo, Exhibit 81, and</p> <p>7 I cannot find that language regarding the Osage Tribe has</p> <p>8 indicated, you know, that it will assert Tradewinds Energy</p> <p>9 must receive a mining permit. Do you know if that</p> <p>10 language is in here in this October 2014 version of the</p> <p>11 email?</p> <p>12 MR. RAY: Object to form.</p> <p>13 A I do not know.</p> <p>14 Q (BY MS. NAGLE) Okay. Do you know if it was</p> <p>15 taken out?</p> <p>16 MR. RAY: Object to form.</p> <p>17 A I don't know.</p> <p>18 Q (BY MS. NAGLE) Okay. Do you have any idea who</p> <p>19 would know the answer to that?</p> <p>20 A I would say someone higher than me in the</p> <p>21 organization that would have been involved in those</p> <p>22 discussions. It's possible Matt Gilhousen would have been</p> <p>23 involved in that transaction or that transfer of</p> <p>24 information. I was not.</p> <p>25 Q Okay. All right. Then I also -- we also</p>

<p>1 discussed, you know, here at the bottom of page 2 of</p> <p>2 Exhibit 36, the October 2013 memo, the statement here, "To</p> <p>3 the extent any soil or other subsurface material is</p> <p>4 touched by Tradewinds, it is nearly incidental to</p> <p>5 Tradewinds' construction of its approved wind farm." I</p> <p>6 will represent to you in the later version, Exhibit 81, I</p> <p>7 will searched for the phrase "merely incidental" and</p> <p>8 cannot find it here in this later version of the memo. Do</p> <p>9 you know if that language was removed?</p> <p>10 MR. RAY: Object to form.</p> <p>11 A I do not.</p> <p>12 Q (BY MS. NAGLE) Okay. Do you know why anyone</p> <p>13 would have wanted to remove that language from the memo?</p> <p>14 A You would have to ask the person who prepared</p> <p>15 it. I do not know.</p> <p>16 Q Okay. I also note that it states here, "The</p> <p>17 issue regarding the sandy soil mining permit may also</p> <p>18 reflect a misunderstanding of Osage Winds' activities or</p> <p>19 the applicable law." What is your understanding of what</p> <p>20 is meant by "may also reflect a misunderstanding of Osage</p> <p>21 Winds' activities"? What's the misunderstanding there?</p> <p>22 MR. RAY: Object to form.</p> <p>23 A My interpretation of that goes back to the</p> <p>24 question you asked me about backfill, where people tend to</p> <p>25 think that backfill's something that has to be bought, and</p>	<p>1 reference to the materials that are in place because the</p> <p>2 presumption is those materials will be put back in the</p> <p>3 hole, and there are differences if the soil is clay, if</p> <p>4 the soil is sand, if the soil has rock. You would have an</p> <p>5 engineer tell you exactly how big your foundation has to</p> <p>6 be, and the type of material that comes out and goes back</p> <p>7 in changes the design you would need.</p> <p>8 Q I see. Who was the engineer that would have</p> <p>9 done that study on the Osage Wind Farm project?</p> <p>10 MR. RAY: Object to form.</p> <p>11 A I don't know off the top of my head.</p> <p>12 Q (BY MS. NAGLE) Okay. Was that kind of a study</p> <p>13 done for this project?</p> <p>14 MR. RAY: Object to form.</p> <p>15 A It must always be done, so I would -- I believe</p> <p>16 it to exist.</p> <p>17 Q (BY MS. NAGLE) Okay. So scrolling down in our</p> <p>18 2014 version of this memo, I will note that when we get to</p> <p>19 the -- you know, the -- sort of the discussion of the case</p> <p>20 law, I see we have Watt v. Western Nuclear, which if we go</p> <p>21 back to Exhibit 36, if you recall, here's Watt v. Western</p> <p>22 Nuclear in the 2013 version of the memo, but then the 2013</p> <p>23 version on page four includes this quote from Rosette that</p> <p>24 we previously discussed, and when I go here past -- I'm</p> <p>25 now back on the 2014 version, and I go on from Watt v.</p>
<p>1 that there's -- I personally always felt there's some</p> <p>2 confusion around those activities and the engineering</p> <p>3 value of those activities which I believe is what this is</p> <p>4 supposed to touch on.</p> <p>5 Q (BY MS. NAGLE) Okay. So this is a</p> <p>6 misunderstanding of did you say the engineering value of</p> <p>7 Osage Winds' activities in relation to the backfill?</p> <p>8 A In relation to the backfill, it's a</p> <p>9 misunderstanding of the activities that we're taking</p> <p>10 and -- let me try and back that up, I guess. So it's</p> <p>11 difficult for someone who doesn't design turbine</p> <p>12 foundations to understand that the dirt itself, when you</p> <p>13 take it out and put it back in, could be anything, and</p> <p>14 that it feels like to some people construction materials</p> <p>15 are being used, and this is intended to capture that</p> <p>16 nuance that putting the dirt backfill in a hole is</p> <p>17 different than buying construction materials.</p> <p>18 Q Okay. And when you say that the backfill "could</p> <p>19 be anything", what do you mean by that?</p> <p>20 A What I mean by that is that whenever we go to</p> <p>21 build or are about to build a wind project, we will hire a</p> <p>22 company to take soil samples to do geo tech, which</p> <p>23 essentially is the same thing you do for an oil well. You</p> <p>24 drill a hole, determine what kind of materials are there</p> <p>25 already, and then you design your concrete foundation with</p>	<p>1 Western Nuclear, the discussion of Rosette has been</p> <p>2 deleted. Do you have an understanding of why the</p> <p>3 discussion of the District Court of New Mexico's decision</p> <p>4 in Rosette was removed?</p> <p>5 A I was not directly involved in the preparation</p> <p>6 of this memo, so I do not have any -- any input as to why</p> <p>7 that might have been removed.</p> <p>8 Q Do you know who removed it?</p> <p>9 A I would suspect the person who prepared the</p> <p>10 document, but I do not know.</p> <p>11 Q Fair enough. So if we continue our movement</p> <p>12 through this memo, if we recall, I'm back now on</p> <p>13 Exhibit 36, and we're -- we're looking at page 6, and we</p> <p>14 earlier discussed the circuit court decision in Mullins,</p> <p>15 which, of course, mentions compensation based upon the</p> <p>16 value of what's taken. I will note that over here in</p> <p>17 our -- in our Exhibit 81, the 2014 version, there's no</p> <p>18 discussion of Mullins if you look through this. Its just</p> <p>19 been completely -- completely taken out. Do you</p> <p>20 understand why the court's decision in Mullins was removed</p> <p>21 from this memo?</p> <p>22 MR. RAY: Object to form.</p> <p>23 A I do not.</p> <p>24 Q (BY MS. NAGLE) Do you know who removed that</p> <p>25 language?</p>

<p>Page 66</p> <p>1 A I do not.</p> <p>2 Q Okay. So another interesting issue, if we look</p> <p>3 at Saddle Mountain Minerals, the Washington Supreme Court</p> <p>4 case, there's this block quote here over the second part,</p> <p>5 beginning with "however", as we discussed before, here in</p> <p>6 Exhibit 36, it mentions, "Even if a surface owner can</p> <p>7 burden a mineral owner's right, it does not mean the</p> <p>8 surface owner can export minerals without the compensation</p> <p>9 to the mineral owner." I will note for the record that in</p> <p>10 Exhibit 81, the 2014 version, that "however" language here</p> <p>11 has been deleted. It's just -- it's just gone. Do you</p> <p>12 know why that -- that part of the quote from Saddle</p> <p>13 Mountain Minerals was deleted?</p> <p>14 MR. RAY: Object to form.</p> <p>15 A I do not. I will say, by 2014, we had</p> <p>16 determined there was no materials to be exported.</p> <p>17 Q (BY MS. NAGLE) So that may have been the reason,</p> <p>18 just because the minerals were not being exported off the</p> <p>19 wind farm?</p> <p>20 A It's purely speculative because I did not</p> <p>21 prepare it, so --</p> <p>22 Q Well, I hate for you to speculate. So do you</p> <p>23 have any idea who would know why that language was</p> <p>24 deleted?</p> <p>25 A The person who prepared the memo would be the</p>	<p>Page 68</p> <p>1 it's a different scope.</p> <p>2 Q Okay. Let's see here. And so, you know, at</p> <p>3 this point, we're looking at this memo being sent to -- of</p> <p>4 course, first of all, the memo, this is dated October 20,</p> <p>5 2014. At that point do you recall whether or not the</p> <p>6 United States had asked or had demanded that Enel and</p> <p>7 EGPNA stop construction at the Osage Wind Farm?</p> <p>8 A I do not recall if at this point that had</p> <p>9 happened. I know that did happen around this time.</p> <p>10 Q Okay. And when that did happen, whether it was</p> <p>11 before or after this memo was sent, did defendants in this</p> <p>12 case, Osage Wind, EGPNA, Enel Kansas, did defendants stop</p> <p>13 construction at the Osage Wind Farm?</p> <p>14 A My job was in Kansas City in an office, and so I</p> <p>15 can't tell you if the field crew did or did not actively</p> <p>16 stop, but I assume there's someone else who you can talk</p> <p>17 to who did.</p> <p>18 Q Do you know who at Enel or EGPNA would have been</p> <p>19 in charge and made the decision to not stop construction</p> <p>20 in October of 2014?</p> <p>21 A I don't know. It could have been possibly maybe</p> <p>22 Nick Lincon would be someone who may know that answer.</p> <p>23 Q Okay. Do you know whether or not the memo that</p> <p>24 we just reviewed, Exhibit 81, the October 2014 version of</p> <p>25 the memo, was that relied on in making the determination</p>
<p>Page 67</p> <p>1 person to ask.</p> <p>2 Q Fair enough. On page 5, going back up just a</p> <p>3 little bit here, I will note, you know, this language here</p> <p>4 says "the reservation of the mineral rights reserved under</p> <p>5 the SRHA", which I think we looked earlier was the</p> <p>6 Stock-Raising Homestead Act, I might be getting that</p> <p>7 wrong, but that act that we were talking about, SRHA, is</p> <p>8 similar to that of the Osage Allotment Act, "although the</p> <p>9 contemplated surface uses under the SRHA are perhaps</p> <p>10 narrower than the general grant of surface rights for</p> <p>11 patentees under the Osage Allotment Act." Do you have an</p> <p>12 understanding of what that sentence means?</p> <p>13 A I do not.</p> <p>14 Q I'm sorry. What was your answer?</p> <p>15 A You're asking me to describe SRHA and how it's</p> <p>16 different from the Osage Allotment Act?</p> <p>17 Q Or do you have an understanding of what the</p> <p>18 significance is of the fact that here the attorneys are</p> <p>19 saying that the contemplated surface uses under the SRHA</p> <p>20 are narrower than the Osage Allotment Act? Do you have</p> <p>21 any understanding of what the significance of that is?</p> <p>22 A Yeah. I take that to mean that you shouldn't --</p> <p>23 you should not assume it's directly applicable.</p> <p>24 Q But the SRHA is directly applicable?</p> <p>25 A Not assume that it's directly applicable because</p>	<p>Page 69</p> <p>1 to not stop construction?</p> <p>2 MR. RAY: Object to form.</p> <p>3 A My recollection is that memo was relied on from</p> <p>4 the beginning as the de facto evidence that what we were</p> <p>5 doing was not mining. Anything to the contrary was a</p> <p>6 misunderstanding.</p> <p>7 Q (BY MS. NAGLE) And before you -- let me rephrase</p> <p>8 that.</p> <p>9 So -- okay. Okay. When did you personally</p> <p>10 reach the conclusion that the construction activities and</p> <p>11 excavation at the Osage Mineral -- of the Osage mineral</p> <p>12 estate did not constitute mining?</p> <p>13 MR. RAY: Object to form.</p> <p>14 A I think the solicitation of expert input was the</p> <p>15 correct action, and so in late 2013, going to our direct</p> <p>16 law representatives and having them find an expert, which</p> <p>17 was Modrall Sperling, who had experience with, you know,</p> <p>18 tribal interaction such as this, after reviewing that</p> <p>19 information, I felt confident that the answer we had</p> <p>20 received and the answer we had discussed was the correct</p> <p>21 one.</p> <p>22 Q (BY MS. NAGLE) Was there ever a time when you</p> <p>23 were uncertain as to whether or not a permit would be</p> <p>24 required from Osage Nation?</p> <p>25 A I have never been uncertain that a permit was</p>

<p>1 required.</p> <p>2 Q Fair enough. Let's move on to our next exhibit.</p> <p>3 If you'll give me just a moment to pull it up. I'm a</p> <p>4 one-man shop over here today. Okay. So I'm going to</p> <p>5 share my screen. This will be Exhibit 91, and it is Bates</p> <p>6 stamped Osage Wind Priv-000357. I will note at the top</p> <p>7 you are copied on an email from Steve Willman to Lynn</p> <p>8 Slade, dated April 25, 2014.</p> <p>9 (WHEREUPON, Exhibit 91 was marked for</p> <p>10 identification.)</p> <p>11 Let's see. Would you like for me to start at</p> <p>12 the bottom? I can.</p> <p>13 A That would be great, actually, if you could.</p> <p>14 Q Okay. So that's -- so here's Justin Larson</p> <p>15 emailing John Blickensderfer -- sorry, I butchered that</p> <p>16 name -- February 27, 2014. Justin writes John, "Do you</p> <p>17 have any experience with this? What type of work have you</p> <p>18 seen performed where the entity had to actually acquire</p> <p>19 this permit? Curious to what extent this is a risk for</p> <p>20 turbine excavations as well as roadwork or even water</p> <p>21 wells for domestic usage." Who is Justin Larson?</p> <p>22 A Justin would have been the head of the</p> <p>23 engineering department and Tradewind.</p> <p>24 Q Okay. And would he have been responsible for</p> <p>25 that analysis you mentioned earlier in terms of studying</p>	<p>1 to someone who may have some other information that we</p> <p>2 hadn't thought about or considered.</p> <p>3 Q Okay. So you believe there was an external</p> <p>4 communication from the BIA at this time, but you're not</p> <p>5 sure exactly what that communication was?</p> <p>6 MR. RAY: Object to form.</p> <p>7 A I see February. I mean, its been seven years.</p> <p>8 I mean, I can't remember the exact communication that came</p> <p>9 in, but at this point, certainly in late 2013 we were</p> <p>10 aware of this possible accusation, you know, per the OMC</p> <p>11 letter, Osage Minerals Council letter, so it wouldn't have</p> <p>12 been abnormal to continue to investigate.</p> <p>13 Q (BY MS. NAGLE) Uh-huh. Do you know if Justin</p> <p>14 Larson ever received a copy of the memo that we looked at</p> <p>15 from October 2013 saying that no permit was required,</p> <p>16 Exhibit 36?</p> <p>17 MR. RAY: Object to form.</p> <p>18 A I do not know.</p> <p>19 Q (BY MS. NAGLE) You do not know. So is it true</p> <p>20 that perhaps some of the individuals working at Tradewind</p> <p>21 or other Enel affiliates were not -- were not aware of the</p> <p>22 legal analysis saying that a permit was not required?</p> <p>23 MR. RAY: Object to form.</p> <p>24 A Anyone directly involved in the Osage Wind</p> <p>25 project was aware of this concept, and everyone who I was</p>
<p>1 the soil type to determine the design structure for the</p> <p>2 wind turbines?</p> <p>3 MR. RAY: Object to form.</p> <p>4 A He would have initiated a third-party to do that</p> <p>5 survey likely at this time, depending on if the ownership</p> <p>6 had changed to Enel yet, but I suspect he was involved.</p> <p>7 Q (BY MS. NAGLE) Okay. And who's John</p> <p>8 Blickensderfer?</p> <p>9 A I believe he was a consultant who had worked in</p> <p>10 Osage County prior, and I believe it's Guy Engineering</p> <p>11 Services, which it says above that, which actually may</p> <p>12 have been the one who did the foundation design. But they</p> <p>13 had been doing work for us, design work for us at other</p> <p>14 projects, if not this one.</p> <p>15 Q Okay. I note here the subject of this is "Osage</p> <p>16 Mining Permit". Do you know what prompted Justin Larson</p> <p>17 in February of 2014 to ask this question about an Osage</p> <p>18 mining permit?</p> <p>19 A I don't have an exact recollection of the</p> <p>20 meeting in which Justin was tasked to ask this question,</p> <p>21 but I believe it to be after an external communication</p> <p>22 came in that says you need this. I think it was the --</p> <p>23 maybe it was the BIA letter that was around that same</p> <p>24 time. But one of those communications triggered an</p> <p>25 internal discussion in which Justin was asked to reach out</p>	<p>1 working with had the same opinion I gave you that what we</p> <p>2 were doing was not mining per our understanding per the</p> <p>3 memo.</p> <p>4 Q (BY MS. NAGLE) So if we go forward here, Justin</p> <p>5 sends this to you on February 28, 2014. "This is the</p> <p>6 special provision that is associated with all projects let</p> <p>7 in Osage County. The contractors are responsible for</p> <p>8 obtaining this permit and paying the associated fees.</p> <p>9 ODOT and City of Tulsa do not pay this as a separate pay</p> <p>10 item. The contractor includes this cost in other items of</p> <p>11 work." And then it looks like you forward this email to</p> <p>12 Darren B. Neil, Steve Willman, and Matt Gilhousen. Who is</p> <p>13 Darren Neil?</p> <p>14 A Darren Neil is an associate of Steve Willman.</p> <p>15 Q Okay. And why did you forward this email to</p> <p>16 Darren, Steve, and Matt?</p> <p>17 A Matt, my direct boss, was -- obviously needed to</p> <p>18 know. Steve and Darren worked closely together on all</p> <p>19 things Tradewind at the time.</p> <p>20 Q Okay. Okay. Okay. Just a moment. Let me pull</p> <p>21 up the next exhibit. And so I'm now going to introduce</p> <p>22 this document as Exhibit 92, and I will note for the</p> <p>23 record that it is Bates stamped Osage Wind Priv-000359,</p> <p>24 and this document is entitled Oklahoma Department of</p> <p>25 Transportation Special Provision for Osage Nation Mineral</p>

<p>Page 74</p> <p>1 Reservation Sandy Soil Permit -- Sandy Soil Mining Permit.</p> <p>2 Excuse me.</p> <p>3 Have you seen this document before, Mr. Weigel?</p> <p>4 (WHEREUPON, Exhibit 92 was marked for</p> <p>5 identification.)</p> <p>6 A I have not. I have seen summaries.</p> <p>7 Q Okay. So going back to Exhibit 91, it looks</p> <p>8 like there were some -- what it looks like to me is that</p> <p>9 there were some attachments to this email because this is</p> <p>10 Bates stamped Osage Wind Priv 000357. This is right after</p> <p>11 that. 000359. Do you recall whether or not -- I'm sorry.</p> <p>12 Let me back up.</p> <p>13 Let's go back to Exhibit 91 here where we</p> <p>14 actually see Steve Willman send, "Attached are documents</p> <p>15 received from Guy Engineering regarding BIA permitting.</p> <p>16 It appears that the special provision applies to</p> <p>17 specifications for highway construction. Please let us</p> <p>18 know your thoughts." And so -- so these are attachments</p> <p>19 to Steve Willman's cover email which I neglected to show</p> <p>20 you. My apologies for that. And you'll see here, it says</p> <p>21 "Osage Mineral Permit.pdf" and "Transportation Improvement</p> <p>22 Program". There's another PDF here. And I note that you</p> <p>23 are copied up here.</p> <p>24 So with that in mind, going to the attachment</p> <p>25 now that has been entered as Exhibit 92, do you recall</p>	<p>Page 75</p> <p>1 identification.)</p> <p>2 A I don't recall reviewing it closely. Again, I</p> <p>3 kind of let it go through the legal process.</p> <p>4 Q And so when you say you "let it go through the</p> <p>5 legal process", who in terms of the team of attorneys that</p> <p>6 you relied on would have reviewed this document?</p> <p>7 MR. RAY: Object to form.</p> <p>8 A Yeah. It would have been primarily interacting</p> <p>9 with Lynn or Steve interacting with Lynn.</p> <p>10 Q (BY MS. NAGLE) Do you know whether they took</p> <p>11 this into consideration in terms of forming the legal</p> <p>12 analysis that you relied on either in October 2013 or</p> <p>13 October 2014?</p> <p>14 A Yeah, I don't know.</p> <p>15 Q You don't know. Okay. Did -- going back to</p> <p>16 Exhibit 91, did anyone here ever follow up with John, the</p> <p>17 vice president of engineering here from Guy Engineering,</p> <p>18 with regards to the attachments or their legal</p> <p>19 significance in terms of a mining permit?</p> <p>20 MR. RAY: Object to form.</p> <p>21 A I believe, based on this context, there wouldn't</p> <p>22 have been any reason to reach back out to John.</p> <p>23 Q (BY MS. NAGLE) And why do you say that? Why</p> <p>24 would there be no reason to reach back out to him?</p> <p>25 A John, the consultant from Guy Engineering, was</p>
<p>Page 75</p> <p>1 receiving this as an attachment to Steve William --</p> <p>2 Willman's February 2014 email to you?</p> <p>3 MR. RAY: Object to form.</p> <p>4 A I do not recall reading this document that came</p> <p>5 through. I do recall the summary, as I mentioned, that it</p> <p>6 was provided after Modrall Sperling had kind of digested</p> <p>7 this document, as the email traffic showed.</p> <p>8 Q (BY MS. NAGLE) Uh-huh. And what was your</p> <p>9 understanding at that time of the significance of this</p> <p>10 document?</p> <p>11 A That it pertained to the construction of</p> <p>12 highways, which was, from an engineering perspective, very</p> <p>13 different than what we were talking about doing in terms</p> <p>14 of just backfill.</p> <p>15 Q Uh-huh. Okay. And then I'm also now going to</p> <p>16 introduce Exhibit, I believe, 93. And so this will be</p> <p>17 Exhibit 93, and it is Bates stamped Osage Wind</p> <p>18 Priv-000361, which, in terms of the way in which</p> <p>19 defendants produced this, seems to be the second</p> <p>20 attachment here, I would believe. At least one of these</p> <p>21 two attachments here referenced in Steve Willman's cover</p> <p>22 email. Are you familiar with this document labeled</p> <p>23 Procedures for Obtaining Sandy Soil and Rock Mining</p> <p>24 Permits, Osage County, Oklahoma?</p> <p>25 (WHEREUPON, Exhibit 93 was marked for</p>	<p>Page 76</p> <p>1 not, I think, part of the IEA subcontractor responsible</p> <p>2 for construction or any decision making relative to the</p> <p>3 project going forward. I recall this to be an exploration</p> <p>4 for more -- more information, which we received the</p> <p>5 documents and then digested those documents into</p> <p>6 ultimately what became the memo into what ultimately</p> <p>7 formed our opinion.</p> <p>8 Q Okay. So I think earlier you stated you weren't</p> <p>9 sure if these documents, specifically Exhibit 93 here and</p> <p>10 Exhibit 92, were considered for purposes of formation of</p> <p>11 the October 2013 legal analysis or the October 2014 legal</p> <p>12 analysis. Is that correct?</p> <p>13 A I said I cannot tell you that they specifically</p> <p>14 incorporated these documents into their analysis, but we</p> <p>15 did -- they were received by them, I would expect. It</p> <p>16 would be reasonable for the law firm to review documents</p> <p>17 that were sent from the client saying, you know, consider</p> <p>18 these documents. It's a reasonable expectation, but I</p> <p>19 can't say without a doubt they did because I didn't</p> <p>20 prepare them.</p> <p>21 Q Did you or Matt Gilhousen or anyone else at</p> <p>22 Tradewind or Enel ever follow up with your attorneys,</p> <p>23 Steve Willman or Modrall Sperling, to find out whether</p> <p>24 they considered these particular documents, Exhibits 92</p> <p>25 and 93, in the formation of their legal analysis?</p>

<p>1 MR. RAY: Object to form.</p> <p>2 A I can't recall that exact question being asked.</p> <p>3 Q (BY MS. NAGLE) Okay. Fair enough. So now let's</p> <p>4 see here. I'm going to introduce another exhibit. Oh,</p> <p>5 here we go.</p> <p>6 Okay. My apologies for the delay. So this will</p> <p>7 be Exhibit 94, and Exhibit 94 is Bates stamped Osage Wind</p> <p>8 Priv-000615. I will note that at the top here, the very</p> <p>9 top email is an email from Lynn Slade to Matt Gilhousen,</p> <p>10 copying Bill Scott, Steve Willman, Rob Freeman, and</p> <p>11 yourself, with a copy to Bill Scott dated October 25,</p> <p>12 2014. Let me actually see if there's a bottom. Okay. So</p> <p>13 that's just a signature. Well, wait a second. No. The</p> <p>14 bottom email is from Matt Gilhousen to yourself, Lynn</p> <p>15 Slade, Bill Scott, and Steve Willman and Rob Freeman,</p> <p>16 October 25, 2013, mineral stat -- I'm assuming that's a</p> <p>17 typo and he means statutes. Matt writes, "Can one of you</p> <p>18 send out the specific language from the statute that</p> <p>19 describes what mineral-related activity does require a</p> <p>20 permit from the BIA?"</p> <p>21 And Lynn responds to that here with his email</p> <p>22 from -- dated October 25, 2013, "Matt, although there are</p> <p>23 specific regulations governing leasing of minerals other</p> <p>24 than oil and gas on other such lands, they likely are also</p> <p>25 subject to the regulations under the Indian Mineral</p>	<p>1 when you read this email from Lynn Slade?</p> <p>2 A I guess this was still early enough that</p> <p>3 information was being collected and more information was</p> <p>4 needed to formulate an opinion at this point, based on</p> <p>5 what I read.</p> <p>6 Q So this was the stage when the legal research</p> <p>7 for the legal analysis was being done. Is that correct?</p> <p>8 MR. RAY: Object to form.</p> <p>9 A Yeah. I can't recall the exact dates of when</p> <p>10 that memo was actually received. It was around this time,</p> <p>11 right, October of 2013?</p> <p>12 Q (BY MS. NAGLE) Fair enough. So let me go to my</p> <p>13 next exhibit. So -- okay. All right. So the next</p> <p>14 exhibit I will show you we will mark as Exhibit 95, and I</p> <p>15 will note for the record this document is Bates stamped --</p> <p>16 sorry -- IEA 00226838, and at the top it says "Meeting</p> <p>17 Notes", dated June 5, 2014, Osage Wind project, Osage</p> <p>18 County, Oklahoma. Topic, "Osage Daily C&G Update".</p> <p>19 Participants are listed as Ron Ritter, Andrew Landoll,</p> <p>20 Aaron Weigel, Justin Larson (notes), Khawar Hameed, Craig</p> <p>21 Mazurowski, Jared Linden, and Randy Gardner. So I note</p> <p>22 you are listed here as a participant.</p> <p>23 What does the C&G update -- what does C&G stand</p> <p>24 for?</p> <p>25 (WHEREUPON, Exhibit 95 was marked for</p>
<p>1 Leasing Act in 25 C.F.R. part 211 which are referenced in</p> <p>2 my earlier email. Here are quotations from key provisions</p> <p>3 of both sets of regulations," et cetera, et cetera.</p> <p>4 What is your understanding of why in October of</p> <p>5 2013 Matt Gilhousen is asking for this analysis at this</p> <p>6 point in time?</p> <p>7 (WHEREUPON, Exhibit 94 was marked for</p> <p>8 identification.)</p> <p>9 A I don't know what his intent was when sending --</p> <p>10 was sending that email. As I said earlier, the Enel team</p> <p>11 is 70,000 people, and this is a conversation that we had,</p> <p>12 I would say, with somewhat regular recurrence between that</p> <p>13 2013 date and, you know, the end of construction. So</p> <p>14 typically it was to include additional parties that were</p> <p>15 getting involved at the different stages.</p> <p>16 Q Okay.</p> <p>17 A But that is -- again, you'd have to ask Matt</p> <p>18 what prompted that email.</p> <p>19 Q Uh-huh. And it looks like this pre dates the</p> <p>20 October 31, 2013 memo that we looked at in Exhibit 36.</p> <p>21 Down here at the bottom it says no mining or work of any</p> <p>22 nature will be permitted upon any tract of land until a</p> <p>23 lease covering such tract shall have been approved by the</p> <p>24 BIA. This is coming from 25 C.F.R. 214.7.</p> <p>25 What was your understanding of these regulations</p>	<p>1 identification.)</p> <p>2 A I actually don't know that.</p> <p>3 Q Okay. Fair enough. What was your role in these</p> <p>4 meetings?</p> <p>5 A I would have been playing the developer role,</p> <p>6 which, again, is just coordinating activities across</p> <p>7 different departments. Justin is obviously an engineer in</p> <p>8 this case.</p> <p>9 Q Okay. Justin Larson, the engineer?</p> <p>10 A Yeah.</p> <p>11 Q Okay. And who's Ron Ritter?</p> <p>12 A Ron was a representative from IEA.</p> <p>13 Q And what was his role in the project?</p> <p>14 A I don't know his specific title. I know he was</p> <p>15 involved in contractual and oversight activities.</p> <p>16 Q Okay. Who's Andrew Landoll?</p> <p>17 A Andrew Landoll was a Tradewind employee in the</p> <p>18 field services department who supported for a short time</p> <p>19 activities in the field at the Osage Wind project.</p> <p>20 Q What sorts of activities? Like the excavation</p> <p>21 activities or something else?</p> <p>22 A No. I mean, it wasn't specific at all to -- to</p> <p>23 any one piece. At this time, and really, I guess,</p> <p>24 throughout all time, after a project transitions from</p> <p>25 ownership of Tradewind into Enel, Tradewind would take a</p>

<p>Page 82</p> <p>1 role that is advisory, and it's always our need to protect</p> <p>2 some of the obligations we had made to land owners. For</p> <p>3 example, sometimes you make specific obligations and you</p> <p>4 say, well, you can't construct here or you shouldn't cut</p> <p>5 that tree down or very specific things that were in our</p> <p>6 interest to make sure we kept those promises, and so we</p> <p>7 tended to have someone there during, you know, certain</p> <p>8 activities to make sure those obligations were met, so</p> <p>9 that would have been his role during this time.</p> <p>10 Q Okay. And we discussed Justin Larson. Who is</p> <p>11 Khawar Hameed?</p> <p>12 A I do not recognize that name.</p> <p>13 Q Who is Craig Mazurowski?</p> <p>14 A His role is with IEA I do remember, but I don't</p> <p>15 know what his title was.</p> <p>16 Q Okay. And who was Jared Linden?</p> <p>17 A I don't know Jared Linden.</p> <p>18 Q Okay. What about Randy Gardener?</p> <p>19 A I'm pretty sure that was an IEA person, but --</p> <p>20 Q Okay. Fair enough. I understand it's seven</p> <p>21 years ago, so. Item number four under discussion here</p> <p>22 states, "Ron reviewing the need for borrow pit depicted on</p> <p>23 plan set. Will review in field and report back to group."</p> <p>24 What was the outcome of that review?</p> <p>25 A It's entirely likely I wasn't included, but --</p>	<p>Page 84</p> <p>1 note you are copied. I believe you're copied here. There</p> <p>2 we go. Yeah. So you are copied up here at the very top</p> <p>3 in this top email from Ron Ritter to Giuseppe DiMarzio,</p> <p>4 dated July 9, 2014.</p> <p>5 But to go step by step, this bottom email</p> <p>6 here -- let's see. First of all, who is Brian Jensen?</p> <p>7 A Brian would have been a project engineer working</p> <p>8 underneath Justin Larson.</p> <p>9 Q Okay. And he writes, "As we discussed in the</p> <p>10 past, we will not be able to transport fill from one part</p> <p>11 of the project to another due to Osage mining laws." What</p> <p>12 is your understanding of what Brian is referring to here</p> <p>13 when he refers to the Osage mining laws?</p> <p>14 A Brian, being in a relatively distant location</p> <p>15 from the discussions around the project, is, I think,</p> <p>16 attempting to comment on the contents of what the memo is</p> <p>17 which is what are the rules that guide the need for a</p> <p>18 sandy soil permit.</p> <p>19 Q How were the contents of that October 13 --</p> <p>20 sorry -- October 31, 2013 email that we looked at,</p> <p>21 Exhibit 36, how were the contents of that email</p> <p>22 communicated to other folks like Brian Jensen or others at</p> <p>23 Tradewind?</p> <p>24 A I would suspect -- not suspect. It was</p> <p>25 certainly discussed with heads of departments. So Justin,</p>
<p>Page 83</p> <p>1 so I don't know, I guess.</p> <p>2 Q Okay. Do you know whether a borrow pit was ever</p> <p>3 a part of the plan for the Osage Wind Farm?</p> <p>4 A I recall discussions about whether a borrow pit</p> <p>5 would be needed, and oftentimes it comes down to the</p> <p>6 design you choose and where you pick the roads and the way</p> <p>7 you construct those roads. I know that there are</p> <p>8 oftentimes dozens of iterations of designs for projects</p> <p>9 and the goal is to optimize to the most affordable</p> <p>10 construction type, and to the extent you can use dirt</p> <p>11 that's already there, it's often cheaper than going and</p> <p>12 borrowing dirt from other places. So this would have been</p> <p>13 part of the design optimization process, which would have</p> <p>14 fallen under Justin at the Tradewind level to make sure he</p> <p>15 was managing, and then I suspect IEA and a third-party</p> <p>16 engineer would have been working on the iterations of that</p> <p>17 design.</p> <p>18 Q Okay. Fair enough. Let's move on to my next</p> <p>19 exhibit. So just a second. So this is a document that</p> <p>20 was previously entered in a prior deposition as</p> <p>21 Exhibit 53, and I will note that it is Bates stamped</p> <p>22 IEA-00227119. And if we go down to the bottom, the very</p> <p>23 bottom email here is from Brian Jensen dated July 9, 2014</p> <p>24 to Randy Gardner, Ron Ritter, Jacob Valentine and some</p> <p>25 other folks, subject matter "Osage Fill Material". I will</p>	<p>Page 85</p> <p>1 being Brian's boss, would have been responsible for</p> <p>2 comprehending what that memo and that specific content was</p> <p>3 and directing his employees to work in a way that was</p> <p>4 planned.</p> <p>5 Q Uh-huh. Do you agree that he has correctly</p> <p>6 interpreted the memo here where he writes, "We will not be</p> <p>7 able to transport fill from one part of the project to</p> <p>8 another due to Osage mining laws"?</p> <p>9 MR. RAY: Object to form.</p> <p>10 A No. What he's -- what he's attempting to do --</p> <p>11 you'd have to ask him what his intent was from those</p> <p>12 words, I suppose. My interpretation is that he's</p> <p>13 referencing a topic that he didn't well understand as well</p> <p>14 as Justin or I would have.</p> <p>15 Q (BY MS. NAGLE) I see. Okay. And so Justin, his</p> <p>16 supervisor, is the individual who would have been educated</p> <p>17 on the contents of the October 2013 legal analysis. Is</p> <p>18 that correct?</p> <p>19 A I believe he would understand it, yes.</p> <p>20 Q Okay. And a little further on he writes, "How</p> <p>21 much fill are you anticipating hauling into the site?</p> <p>22 Will this be a change order as construction plans</p> <p>23 initially had a borrow-on-project site which is no longer</p> <p>24 a viable method." Do you have an understanding of why the</p> <p>25 borrow pit was no longer a viable method?</p>

<p>Page 86</p> <p>1 A I can answer that throughout the design</p> <p>2 optimization process, as I mentioned -- there was an email</p> <p>3 of me being frustrated earlier about the litigation that</p> <p>4 had happened so far. Not a surprise comment. The way we</p> <p>5 optimize the project was with the intent that a lawsuit</p> <p>6 may in fact happen and that we wanted to build the site in</p> <p>7 as minimal impact as possible so as to, you know, minimize</p> <p>8 the likelihood of a -- of a lawsuit.</p> <p>9 Q So --</p> <p>10 A Despite us believing that it was not mining.</p> <p>11 Q I see. So really what Brian is communicating</p> <p>12 here is less -- less adherent to the actual detailed legal</p> <p>13 analysis we looked at in Exhibit 36 and more from</p> <p>14 instructions he received to sort of be very conservative</p> <p>15 and create the best record possible should litigation</p> <p>16 arise. Is that correct?</p> <p>17 MR. RAY: Object to form.</p> <p>18 A I believe he was instructed that way from</p> <p>19 Justin.</p> <p>20 Q (BY MS. NAGLE) Going up here, on July 9th, Ron</p> <p>21 Ritter responds, and he says, "We intend to balance the</p> <p>22 site." What is your understanding -- I know we discussed</p> <p>23 this a little bit earlier. But here, what is younger of</p> <p>24 what Ron is referring to by saying, "We intend to balance</p> <p>25 the site"?</p>	<p>Page 88</p> <p>1 if the original scope was for us to be allowed to mine on</p> <p>2 site fill." What does Ron mean by "mine on site fill"?</p> <p>3 MR. RAY: Object to form.</p> <p>4 A You'd have to ask him. My understanding is he's</p> <p>5 talking about borrow pits.</p> <p>6 Q (BY MS. NAGLE) Okay. All right. Let's move on</p> <p>7 to our next document that we have here. Okay. So this is</p> <p>8 a document that has previously been entered as Exhibit 37,</p> <p>9 and it is Bates stamped Osage Wind-024749, and up here at</p> <p>10 the top, it's an email from Joan Heredia to Aaron Landoll</p> <p>11 and you, copying a lot of folks, I won't read all their</p> <p>12 names, dated May 22, 2014. Do you remember this email?</p> <p>13 A I'd have to look through it from the bottom, if</p> <p>14 we could.</p> <p>15 Q No problem. We will do that. So at the bottom,</p> <p>16 it looks like here we have an email from Khawar Hameed. I</p> <p>17 know earlier you stated you weren't sure who he is. It</p> <p>18 does look like he's from EGPNA here. He writes on</p> <p>19 Thursday May 22, 2014, "Attached please find the POD from</p> <p>20 today." What is the "POD from today"? Do you know?</p> <p>21 A Plan of the day.</p> <p>22 Q Okay. I see. All right. And then up above</p> <p>23 that, Joan Heredia responds. You're, you know, one of the</p> <p>24 recipients. She says, "Aaron," presumably to you, "I note</p> <p>25 in the attached POD sieve analysis being performed for</p>
<p>Page 87</p> <p>1 A My knowledge of balance is that in lieu of</p> <p>2 borrowing from somewhere else to fill, you would take an</p> <p>3 area that's not level and you would dig from the high</p> <p>4 side, move it to the low side in order to make something</p> <p>5 level.</p> <p>6 Q Okay. So he says, "That process, along with the</p> <p>7 excavation of the foundation itself, will develop the vast</p> <p>8 majority of materials we need for fill and for associated</p> <p>9 sloping. However, should we need to import fill, the</p> <p>10 quarry in Burbank from which we are deriving our access</p> <p>11 road aggregate can supply us off site material." Do you</p> <p>12 know if there were any further conversations at Enel or</p> <p>13 Tradewind about importing off site fill materials from</p> <p>14 Burbank?</p> <p>15 MR. RAY: Object to form.</p> <p>16 A Well, the term aggregate and fill are different</p> <p>17 in this sentence. And I -- aggregate was certainly</p> <p>18 purchased off site, as was always the intent. I don't</p> <p>19 know if fill ultimately was ever needed, and therefore I</p> <p>20 was not part of conversations to purchase any.</p> <p>21 Q (BY MS. NAGLE) Okay. And so then --</p> <p>22 unfortunately our stamp here is right over Giuseppe's</p> <p>23 email, but Ron has another email up here to Giuseppe, and</p> <p>24 he writes -- he writes, "It would not be practical for us</p> <p>25 to perform this work with imported fill at no extra cost</p>	<p>Page 89</p> <p>1 road aggregate. In an abundance of caution that we do not</p> <p>2 want to trigger a minerals permit, will you please look</p> <p>3 into this and report back to this group on what the plans</p> <p>4 are. I know it is common to try to use on site material</p> <p>5 when possible, but as you know, Osage is special."</p> <p>6 You then write back on May 22nd to Ron, Mike,</p> <p>7 Craig -- or I guess you were forwarding, I suppose. It's</p> <p>8 actually hard to see because it doesn't say that here.</p> <p>9 "It is my understanding that the sieve analysis is on</p> <p>10 aggregate that is coming from the quarry, but as Joan</p> <p>11 suggests below, please confirm that's the case. It's very</p> <p>12 important that we not remove ANY," in all caps, "soil from</p> <p>13 the project site or use site materials in lieu of</p> <p>14 materials we would typically buy off site in developing a</p> <p>15 wind project."</p> <p>16 Why did you tell Ron, Mike, and -- Ron, Mike,</p> <p>17 and Craig that it would be important to not use site</p> <p>18 materials in lieu of materials we would typically buy off</p> <p>19 site in developing a wind project?</p> <p>20 A It's in an incredibly important distinction</p> <p>21 between backfill and aggregate, and this email is about</p> <p>22 aggregate, which would typically be purchased off site.</p> <p>23 As -- I'm not a civil engineer, but a sieve analysis would</p> <p>24 be a measurement around aggregate, and this communication</p> <p>25 is to confirm, because at this point Joan saw something in</p>

<p>Page 90</p> <p>1 the plan of the day, alerted me, I'm confirming the</p> <p>2 understanding with the field people that when we are using</p> <p>3 aggregate, it's coming from off site.</p> <p>4 Q And so that distinction you've made between</p> <p>5 backfill and aggregate, is that a distinction you made</p> <p>6 based on the legal analysis performed by Modrall Sperling?</p> <p>7 MR. RAY: Object to form.</p> <p>8 A That legal analysis, I think, had commentary</p> <p>9 about making commercial use of materials, and while it was</p> <p>10 not ultimately determined that you were not allowed to do</p> <p>11 that, we, out of abundance of caution, said, to be very</p> <p>12 clear, if it's something we normally buy, we will continue</p> <p>13 to buy it, and so not replacing any material for something</p> <p>14 you would commercially otherwise have to buy; therefore,</p> <p>15 putting a turbine foundation in, we would never buy</p> <p>16 materials for there, dig it out, put it in, but for roads</p> <p>17 and for aggregate specifically, we normally would buy rock</p> <p>18 for the roads, so let's go buy rock from the quarry, as we</p> <p>19 did at this site.</p> <p>20 Q (BY MS. NAGLE) So I understand that distinction</p> <p>21 that you're making here in now in terms of the aggregate</p> <p>22 for the roads and backfill for a turbine and what you all,</p> <p>23 you know, would normally do in the ordinary course of</p> <p>24 business, but do you -- I guess, could you help me</p> <p>25 understand how did the legal analysis that we looked at in</p>	<p>Page 92</p> <p>1 A I can't tell you if that specific information</p> <p>2 was considered in drafting this document. I can tell you</p> <p>3 it was discussed at Tradewinds in response to this.</p> <p>4 Q (BY MS. NAGLE) And who would have been a part of</p> <p>5 these conversations at Tradewind with regards to the legal</p> <p>6 distinction between backfill and aggregate?</p> <p>7 A I suspect Matt Gilhousen would have been</p> <p>8 involved.</p> <p>9 Q Uh-huh.</p> <p>10 A His background is civil engineering, so --</p> <p>11 Q And would any of the attorneys who were involved</p> <p>12 in creating this legal analysis here in Exhibit 36, would</p> <p>13 they have been involved in those conversations?</p> <p>14 A There were numerous times when they were</p> <p>15 involved in discussions about this memo. Whether that</p> <p>16 specific topic was raised, I can't tell you exactly that</p> <p>17 it was.</p> <p>18 Q Okay. Do you know whether Bill Scott and Sarah</p> <p>19 Stevenson, when they undertook the effort to write this</p> <p>20 email, were they aware of the distinction that you and the</p> <p>21 others at Tradewind were making for backfill and aggregate</p> <p>22 for legal purposes?</p> <p>23 MR. RAY: Object to form.</p> <p>24 A I do not know if they were aware of that.</p> <p>25 Q (BY MS. NAGLE) Okay. Do you know if Lynn Slade</p>
<p>Page 91</p> <p>1 Exhibit 36 explain or justify that distinction between</p> <p>2 backfill versus aggregate, or did the attorneys not</p> <p>3 consider that at all?</p> <p>4 MR. RAY: Object to form.</p> <p>5 A I would have to go back and reread all the</p> <p>6 recommendations --</p> <p>7 Q (BY MS. NAGLE) Sure.</p> <p>8 A -- that were in that memo to determine, you</p> <p>9 know, how that relates. Like I can tell you that after</p> <p>10 receiving the memo and between this time, start of</p> <p>11 construction, as I said, we had conversations to try and</p> <p>12 take the absolute safest, most clear course of action, and</p> <p>13 that included that distinction of aggregate being</p> <p>14 purchased outside or not based on conversations with</p> <p>15 lawyers.</p> <p>16 Q Okay. I will note looking back at Exhibit 36</p> <p>17 right now, the question's presented whether "a surface</p> <p>18 owner who excavates land for the purpose of construction</p> <p>19 consistent with its surface rights and does not remove the</p> <p>20 land excavated from the property is engaged in mining of</p> <p>21 the mineral state and requires a mining permit". I don't</p> <p>22 see anything in here in relation as to whether it's for</p> <p>23 backfill or aggregate purposes, but is that your</p> <p>24 understanding that that was part of this legal analysis?</p> <p>25 MR. RAY: Object to form.</p>	<p>Page 93</p> <p>1 was aware of that distinction you were making between</p> <p>2 backfill and aggregate for legal purposes?</p> <p>3 A I do not know if they were aware of that.</p> <p>4 Q Okay. So going back to Exhibit 37 here, you</p> <p>5 continue after that sentence to state, "Osage Nation has</p> <p>6 mineral rights for the project lands, and removal of soil,</p> <p>7 especially for commercial gain, could constitute mining."</p> <p>8 You state later on, "Please make sure this message is</p> <p>9 widely communicated to any subcontractors working on the</p> <p>10 project." What steps were taken by Tradewind or Enel to</p> <p>11 ensure that this message was widely communicated to the</p> <p>12 subcontractors working on the project?</p> <p>13 MR. RAY: Object to form.</p> <p>14 A This communication is an example. The person I</p> <p>15 would have been responsible with communicating with would</p> <p>16 have been Ron Ritter, as we previously discussed, as the</p> <p>17 primary IEA contact. It would have been in a, you know,</p> <p>18 supervisory managerial role and expected to accomplish</p> <p>19 that from his side. I don't know what record he may or</p> <p>20 may not have of that that occurred below him.</p> <p>21 Q (BY MS. NAGLE) Okay. So you would have looked</p> <p>22 to Ron to communicate the messaging you gave here in this</p> <p>23 email about what is permissible and what's not permissible</p> <p>24 under Osage mining laws, he would have been tasked with</p> <p>25 communicating that to the subcontractors?</p>

<p>Page 94</p> <p>1 MR. RAY: Object to form.</p> <p>2 A He along with the others in this email who</p> <p>3 generally represented management the on site.</p> <p>4 Q (BY MS. NAGLE) Okay. And did Ron, Mike, or</p> <p>5 Craig ever get to actually review the contents of what we</p> <p>6 just looked at, Exhibit 36, the October 2013 email from</p> <p>7 Modrall Sperling?</p> <p>8 A I don't know.</p> <p>9 Q Okay. Okay. So where Joan writes, "As you</p> <p>10 know, Osage is special," what did she mean? What was your</p> <p>11 understanding of what she meant by that?</p> <p>12 A You'd have to ask her --</p> <p>13 Q Okay.</p> <p>14 A -- what she meant by special.</p> <p>15 Q Fair enough. Let me move on to our next</p> <p>16 exhibit. So let's see here. Okay. This has previously</p> <p>17 been entered as Exhibit 8 in this litigation, and it is</p> <p>18 Bates stamped -- oh, and, unfortunately, we don't have the</p> <p>19 court reporter's stamp on this, and I'm not sure why</p> <p>20 that's the case. But I can represent to you this is</p> <p>21 Exhibit 8. It's Bates stamped Osage Wind Priv-000089, and</p> <p>22 it is an email from Joan Heredia to Daren Daters and</p> <p>23 Giuseppe DiMarzio. Let's see here. Have you seen this</p> <p>24 email exchange before?</p> <p>25 A I believe I have seen this before, yes.</p>	<p>Page 96</p> <p>1 Q Okay.</p> <p>2 A There -- I don't know.</p> <p>3 Q Was Joan given a copy of the October 2013</p> <p>4 memorandum from Modrall Sperling that we looked at in</p> <p>5 Exhibit 36?</p> <p>6 MR. RAY: Object to form.</p> <p>7 A I believe Joan to have been provided a copy of</p> <p>8 that memo, but I don't have a record of it in front of me</p> <p>9 to confirm, but --</p> <p>10 Q (BY MS. NAGLE) Okay.</p> <p>11 A -- she certainly should have.</p> <p>12 Q Okay. Did you -- in terms of deciding how to</p> <p>13 communicate what is permissible and not permissible under</p> <p>14 Osage Nation mineral laws, mining laws to the team, did</p> <p>15 you take your orders from Joan or did Joan tell you how to</p> <p>16 communicate these things? Who was in charge with regards</p> <p>17 to those instructions?</p> <p>18 MR. RAY: Object to form.</p> <p>19 A Neither of us would directly report to each</p> <p>20 other.</p> <p>21 Q (BY MS. NAGLE) Okay. Do you have an</p> <p>22 understanding of why this language that you and Joan are</p> <p>23 using in May of 2014 to communicate to others working on</p> <p>24 the Osage Wind Farm, why this particular language was not</p> <p>25 included in the October 2014 version of the memo,</p>
<p>Page 95</p> <p>1 Q Okay. So she writes, "It is very important that</p> <p>2 we not remove any soil from the project site or use site</p> <p>3 materials in lieu of materials we would typically buy off</p> <p>4 site in developing a wind project. Osage Nation has</p> <p>5 mineral rights for the project lands, and removal of the</p> <p>6 soil, especially for commercial gain, could constitute</p> <p>7 mining." This appears to me, I'll represent to you, to be</p> <p>8 an exact word for words copy and paste of what you said in</p> <p>9 the exhibit we just looked at. Would you agree with that?</p> <p>10 MR. RAY: Object to form.</p> <p>11 A I would agree.</p> <p>12 Q (BY MS. NAGLE) Was -- do you recall whether or</p> <p>13 not that was purposeful for you and Joan to be copying and</p> <p>14 pasting the news in the exact same language?</p> <p>15 MR. RAY: Object to form.</p> <p>16 A Joan and I and others were continuously in</p> <p>17 communication around this time, and it would not be</p> <p>18 uncommon for us to be, you know, collaborating or</p> <p>19 communicating the same -- the same thing and making sure</p> <p>20 the messaging was consistent.</p> <p>21 Q (BY MS. NAGLE) So I note her email's dated</p> <p>22 May 15th and yours is dated May 22nd. How would you have</p> <p>23 gotten the quote you used in your email from her to use in</p> <p>24 your May 22nd email?</p> <p>25 A Yeah, I don't know.</p>	<p>Page 97</p> <p>1 Exhibit 81 that was sent to Alan Woodcock?</p> <p>2 MR. RAY: Object to form.</p> <p>3 A I, you know, would not expect a lawyer to grab</p> <p>4 email language and put it in a memo, I guess.</p> <p>5 Q (BY MS. NAGLE) Okay. But beyond that</p> <p>6 expectation, you don't have an understanding of why this</p> <p>7 language didn't end up in the version of the memo that was</p> <p>8 sent to Alan Woodcock?</p> <p>9 A This would have been written by either Joan or</p> <p>10 I. I can't tell you which one or if there's other email</p> <p>11 traffic. So I can't tell you why it didn't make it into</p> <p>12 the memo, no.</p> <p>13 Q Was this language that you or Joan wrote based</p> <p>14 on your reading of the detailed legal analysis that</p> <p>15 Modrall Sperling provided to you?</p> <p>16 MR. RAY: Object to form.</p> <p>17 A This does not look like language that was in the</p> <p>18 memos, and it looks like something that was written by</p> <p>19 someone in the company.</p> <p>20 Q (BY MS. NAGLE) Would it have been written based</p> <p>21 on the detailed legal analysis that your attorneys</p> <p>22 provided?</p> <p>23 MR. RAY: Object to form.</p> <p>24 A I would say anything I wrote that was around</p> <p>25 this mining issue was very well informed by that memo.</p>

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1 Q (BY MS. NAGLE) Would you have run this language

2 by the attorneys who wrote that memo before disseminating

3 it to the team?

4 A No.

5 Q No. Okay. In your view, is this language in

6 agreement with or in accordance with the legal analysis in

7 the memo?

8 MR. RAY: Object to form.

9 A I'm not sure I can make that assessment.

10 Q (BY MS. NAGLE) Would you have made that

11 assessment before sending this language in 2014?

12 A I would have sent direction I thought was

13 appropriate, so.

14 Q And in determining what's appropriate to tell

15 the team, would you have relied on the legal analysis that

16 you got from Modrall Sperling regarding Osage mining laws?

17 A Yes.

18 Q Let's move on to the next exhibit. Let's see

19 here. Okay. This will be Exhibit 96, and I will note

20 that it is Bates stamped IEA 00239657, and it looks like

21 another set of meeting notes. This one is dated June 30,

22 2014, participants are Ron Ritter, Craig Mazurowski, Mike

23 Welch, Randy Gardner, Bill Maluska, Brian Jensen, Rod

24 Northway, Aaron Weigel. We discussed -- who's Mike well?

25 (WHEREUPON, Exhibit 96 was marked for

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1 identification.)

2 A I believe he was an IEA employee.

3 Q Okay. Do you remember what his roles or

4 responsibilities were with regards to this project?

5 A I recall him being on site. I don't know what

6 his responsibilities were.

7 Q Okay. Who is Bill Maluska?

8 A A employee who, again, was, I think, tasked with

9 on site management of some level.

10 Q Okay. Who's Rod Northway?

11 A Rod Northway was an additional developer like

12 me.

13 Q Okay. Did you interface in any kind of regular

14 manner with Rod Northway?

15 A We work in the same office. Rod came in

16 somewhat late in this process to help support making sure

17 all the development activities were covered.

18 Q Okay. Under the action items here on page two

19 in this document, we see here "earthwork balance

20 confirmation for mitigation of Osage mining permit risk"

21 is assigned to Jacob. Does "Jacob" here refer to Jacob

22 Valentine?

23 A That's a good question. Was there a Jacob

24 Valentine there, like -- I don't know what Jacob it is, I

25 guess.

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1 Q Okay. So we're not sure who Jacob is. What is

2 your understanding of what is meant by "Osage mining

3 permit risk"?

4 A I would describe that as the same litigation

5 risk we discussed previously, which is that, per the memo,

6 we thought we weren't mining, but that we could take steps

7 to make sure that we were constructing in the safest way

8 possible to prevent unnecessary litigation.

9 Q And was that understanding that you just

10 described as the Osage mining permit risk, was that

11 understanding informed by the legal analysis performed by

12 Modrall Sperling?

13 A Yes.

14 Q Okay. It says -- what -- how would the

15 earthwork balance mitigate the Osage mining permit risk?

16 MR. RAY: Object to form.

17 A Yeah. Earthwork is moving dirt, so I would

18 interpret this as the -- you know, the movement of dirt

19 across the site.

20 Q (BY MS. NAGLE) Okay. Who --

21 A As we discussed earlier, there was an -- there

22 was an attempt earlier to minimize that, right, so I would

23 read this comment as that.

24 Q And who would determine what sort of earthwork

25 balance would need to be performed to mitigate the Osage

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1 mining permit risk?

2 MR. RAY: Object to form.

3 A Yeah, I don't -- I don't know who would

4 ultimately sign off on that.

5 Q (BY MS. NAGLE) What is your understanding of why

6 the earthwork balance that was undertaken to mitigate the

7 Osage mining permit risk, those steps and those plans with

8 earthwork balance were not discussed in the October 2013

9 version of the memo we looked at in Exhibit 36? What is

10 your understanding of why these sort of mitigation efforts

11 were not discussed there?

12 MR. RAY: Object to form.

13 A Yeah. I can't tell you, I guess, why things

14 were or were not included. I can tell you that the

15 Tradewind team was acting, I believe, in good faith to

16 minimize impacts.

17 Q (BY MS. NAGLE) And the efforts you undertook to

18 act in good faith to minimize those impacts, for instance,

19 what we're looking at here in this document, were those

20 informed by conversations you had with the attorneys who

21 drafted the detailed legal analysis?

22 A Certainly the initial starting point was the

23 memo. Other legal advice, verbal, I can't -- I can't

24 recall whether we specifically talked about minimization

25 efforts.

<p style="text-align: right;">Page 102</p> <p>1 Q Okay. I do know we looked at Exhibit 36, the</p> <p>2 October 2018 memo, and it referred to the interaction with</p> <p>3 the subsurface materials as touching the soil and it</p> <p>4 being, quote, "nearly incidental". Is it your</p> <p>5 understanding that this earthwork balance confirmation</p> <p>6 here is within the scope of merely incidental touching of</p> <p>7 the subsurface soil?</p> <p>8 MR. RAY: Object to form.</p> <p>9 A I personally thought that to be the case that</p> <p>10 moving dirt for a road was merely incidental.</p> <p>11 Q (BY MS. NAGLE) Okay. All right. Let's stop</p> <p>12 that for just a second. Okay. In your -- in your mind,</p> <p>13 was -- well, first of all, do you have an understanding of</p> <p>14 what it refers to when someone at the wind farm does shot</p> <p>15 and charging or shoot and charging?</p> <p>16 A I would need more information to know what that</p> <p>17 is.</p> <p>18 Q Okay. All right. I'm trying to find my next</p> <p>19 piece of evidence. I've got a lot of things here. Where</p> <p>20 is it at. That is not -- okay. Okay. Okay. So let's</p> <p>21 see here. Okay. So moving on to the next exhibit, this</p> <p>22 will be Exhibit 97. Let me grab it really quick. Here we</p> <p>23 go.</p> <p>24 Okay. So this will be Exhibit 97, and this</p> <p>25 document is Bates stamped Osage Wind-019006, and it looks</p>	<p style="text-align: right;">Page 104</p> <p>1 Q (BY MS. NAGLE) Okay. So what would need to take</p> <p>2 place in order to ensure that the pieces were smaller than</p> <p>3 6 inches?</p> <p>4 MR. RAY: Object to form.</p> <p>5 A I don't know what activities could possibly be</p> <p>6 taken to make sure that happens. I know crushing could be</p> <p>7 one of them.</p> <p>8 Q (BY MS. NAGLE) Okay. And what is your</p> <p>9 understanding then of -- with these specifications in</p> <p>10 place, would it have been possible for Osage Wind or</p> <p>11 Tradewind or Enel to simply dig up all of the materials</p> <p>12 there at the Osage Wind Farm and put it all back in the</p> <p>13 ground as they originally found it? Would that have been</p> <p>14 possible?</p> <p>15 MR. RAY: Object to form.</p> <p>16 A We know that pieces came out that were bigger</p> <p>17 than 6 inches, so it would not have met the design for the</p> <p>18 foundation to put those back in the hole.</p> <p>19 Q (BY MS. NAGLE) Okay. Let's -- I've got next --</p> <p>20 hold on one moment. Let me -- oh, okay. Great. Okay. I</p> <p>21 see it. Okay. I'm going to move on to another document.</p> <p>22 Okay. And this document has previously been entered as</p> <p>23 Exhibit 84. We don't have a court reporter stamp just yet</p> <p>24 because it was used in yesterday's deposition, but I will</p> <p>25 let you all know that Exhibit 84 is Bates stamped Osage</p>
<p style="text-align: right;">Page 103</p> <p>1 like it's an email from Bill Price to Giuseppe DiMarzio</p> <p>2 and Bill Maluska called Osage backfill. Have you seen</p> <p>3 this email exchange before?</p> <p>4 (WHEREUPON, Exhibit 97 was marked for</p> <p>5 identification.)</p> <p>6 A I don't recall it.</p> <p>7 Q Okay. Let's go down to the bottom. It looks</p> <p>8 like it starts with an email from Matt Johnson to Chris</p> <p>9 Hanson dated November 4, 2014. There's quite a bit here.</p> <p>10 I'll let you review it.</p> <p>11 A Okay.</p> <p>12 Q Okay. Above that, Chris Hanson writes to Craig</p> <p>13 Mazurowski, Bill Moskaluk and Giuseppe. Giuseppe reached</p> <p>14 out, "BARR Engineering over the weekend has agreed and</p> <p>15 inquired as to what variance the project can receive for</p> <p>16 eliminating the crushing costs." Who is BARR Engineering?</p> <p>17 A They provide foundation designs. I suspect they</p> <p>18 did on this project.</p> <p>19 Q Okay. Chris writes, "BARR has recommended</p> <p>20 nothing larger than 6 inches minus in the 67-foot</p> <p>21 footprint of the foundation." What does that mean?</p> <p>22 MR. RAY: Object to form.</p> <p>23 A This is a reference to the backfill in that, if</p> <p>24 you're going put stuff back in the hole, you have to be</p> <p>25 smaller than 6 inches, each individual piece.</p>	<p style="text-align: right;">Page 105</p> <p>1 Wind-000114. I note at the top here it's an email from</p> <p>2 Nick Lincon to David Post and several others. Have you</p> <p>3 seen this email? It's dated October 16, 2014. Have you</p> <p>4 seen this email before, Mr. Weigel?</p> <p>5 A Don't recall the contents of it, but --</p> <p>6 Q Okay.</p> <p>7 A I don't recall.</p> <p>8 Q So you may or may not have seen this email</p> <p>9 before. I will say on the earlier version, you are copied</p> <p>10 here, October 16, 2014 from Joan Heredia to Mike Tierney</p> <p>11 and Bill Scott and Lynn Slade. Who's Mike Tierney?</p> <p>12 A I don't know Mike Tierney's role.</p> <p>13 Q I'm sorry. You're saying you don't recall his</p> <p>14 role?</p> <p>15 A Yeah. I don't recall his role. Sorry.</p> <p>16 Q Okay. And it looks like Joan Heredia writes --</p> <p>17 let me make sure I find the exact spot. Oh, I see. Okay.</p> <p>18 Hold on. Sorry. So she states here in reference to her</p> <p>19 conversation with the superintendent, "She stated our use</p> <p>20 of the material would require a permit and that she would</p> <p>21 send me a form. I indicated we were not using material,</p> <p>22 rather we were digging a hole and filling back in a hole."</p> <p>23 Do you see that there?</p> <p>24 A Yes.</p> <p>25 Q And is your understanding of what Joan is</p>

<p>1 stating here -- is your understanding that that's</p> <p>2 accurate?</p> <p>3 A Her opinion would have been formulated per the</p> <p>4 memo that we were backfilling material that came out of</p> <p>5 the hole. That looks accurate to me.</p> <p>6 Q Okay. And she writes, "I replied, no, we were</p> <p>7 crushing the rock because it varied in size from 3 inches</p> <p>8 to a couple feet and we had to crush it to put it back</p> <p>9 into the hole." Is it correct that you had to crush it to</p> <p>10 put it back into the hole?</p> <p>11 MR. RAY: Object to form.</p> <p>12 A Yeah. You'd have to ask a structural engineer</p> <p>13 whether it would have been okay to put it back in the</p> <p>14 multiple feet size.</p> <p>15 Q (BY MS. NAGLE) Uh-huh. She writes here, Joan</p> <p>16 writes, "I told her I do not have the authority to stop</p> <p>17 work but stated I would make sure to speak to management</p> <p>18 tomorrow morning and promised to get back to her with how</p> <p>19 we intended to proceed." Were you a part of any of those</p> <p>20 conversations with management with regards to how to</p> <p>21 proceed?</p> <p>22 A I believe at this point the project had</p> <p>23 transferred to fully within Enel's control, and my</p> <p>24 influence was, you know, minimal at this point. So I</p> <p>25 don't recall being on those conversations with management.</p>	<p>1 stamped Osage Wind-036433.</p> <p>2 Have you -- are you familiar with this document?</p> <p>3 It's titled Project Short Views Update October 17, 2014.</p> <p>4 Have you seen this before?</p> <p>5 A I have not or don't recall.</p> <p>6 Q Okay. All right. You were still the Osage Wind</p> <p>7 site coordinator in October 2014. Is that correct?</p> <p>8 MR. RAY: Object to form.</p> <p>9 A The Osage Wind site coordinator? If that's an</p> <p>10 official definition of something, I'm not aware of it, I</p> <p>11 guess.</p> <p>12 Q (BY MR. RAY) What was your official designation</p> <p>13 at that time?</p> <p>14 A I mean, I still would have been the Tradewind</p> <p>15 developer of record for the project, but depending on when</p> <p>16 the actual MIPA happened, when it got sold to Enel, I</p> <p>17 wouldn't have any official capacity for Osage Winds.</p> <p>18 Q Okay. Let's see here. So looking all the way</p> <p>19 down, this is quite a lengthy document here, on page 90 to</p> <p>20 91 where it says "staff", it lists quite a few folks here.</p> <p>21 Some of these are some names I know we've mentioned</p> <p>22 before. It appears to me these are folks from IEA. I</p> <p>23 don't know if would you agree with that. Chris Hanson,</p> <p>24 Craig Mazurowski, Mike Welch?</p> <p>25 A I recognize those first three names as IEA</p>
<p>1 It may have not been -- it may not have been appropriate</p> <p>2 for me to be there either at that time.</p> <p>3 MS. NAGLE: Okay. We'll stop looking at this</p> <p>4 document and -- just a second. Okay. So I'm going to</p> <p>5 introduce another exhibit. I also seem to not have this</p> <p>6 document which is very -- oh, no, maybe I do. No. Oh,</p> <p>7 sorry. Well, no. Oh, okay. No.</p> <p>8 You know what, I think that I just have a couple</p> <p>9 more questions, and so what might be helpful is if we just</p> <p>10 took like a five minute break, and that way I can sort of</p> <p>11 find out what my final few questions are, and then we can</p> <p>12 come back and do those and then break for lunch. Would</p> <p>13 that work?</p> <p>14 MR. RAY: That's fine.</p> <p>15 MS. NAGLE: Okay. So we'll take a five. Okay?</p> <p>16 Thanks so much.</p> <p>17 THE VIDEOGRAPHER: We are off the record at</p> <p>18 12:03.</p> <p>19 (Break taken.)</p> <p>20 THE VIDEOGRAPHER: We are back on the record at</p> <p>21 12:09.</p> <p>22 Q (BY MS. NAGLE) All right. So I have just one</p> <p>23 last exhibit that I would like to show before I conclude</p> <p>24 my questioning, so I will be referring to here Exhibit 70.</p> <p>25 Its previously been entered as Exhibit 70, and it is Bates</p>	<p>1 employees.</p> <p>2 Q Okay. Did you ever communicate regularly with</p> <p>3 any of these individuals regarding the construction and</p> <p>4 excavation of the Osage Wind Farm?</p> <p>5 A Craig and Mike I had at least some interaction</p> <p>6 with. Chris I had met a couple times but was not directly</p> <p>7 involved with my interactions with the sub.</p> <p>8 Q Okay. Up above here we've got issues and</p> <p>9 concerns on the page ending in Bates stamp 490, and letter</p> <p>10 "I" here says, "Cut fills are not balancing due to mineral</p> <p>11 rights issues and land owners." What is your</p> <p>12 understanding of -- or were you aware at that time that</p> <p>13 cut fills were not balancing because of mineral rights</p> <p>14 issues?</p> <p>15 MR. RAY: Object to form.</p> <p>16 A Yeah, I would not have been involved in the on</p> <p>17 site construction that would have led to this. I</p> <p>18 described my understand earlier of cut and fill being</p> <p>19 taking it from where it's high and moving it to where it's</p> <p>20 low to make flat roads. I can't tell you what was meant</p> <p>21 by the person who wrote this comment.</p> <p>22 Q (BY MS. NAGLE) Okay. It says here "having to</p> <p>23 import fill from the quarry in some areas". Were you</p> <p>24 aware that IEA, for purposes of this construction, was</p> <p>25 importing fill?</p>

<p>Page 110</p> <p>1 MR. RAY: Object to form.</p> <p>2 A I was not aware.</p> <p>3 Q (BY MS. NAGLE) Okay. It says here under "P",</p> <p>4 project pressure -- "Project getting pressure from the</p> <p>5 Osage BIA for a sandy soils permit. They have issued a</p> <p>6 request to stop. Work is proceeding forward via request</p> <p>7 of EGP." Do you understand EGP to be a reference to Enel</p> <p>8 Green Power North America here?</p> <p>9 A That's how I would interpret EGP, yes.</p> <p>10 Q (BY MS. NAGLE) Okay.</p> <p>11 A And how was the determination to not stop</p> <p>12 construction and excavation communicated to the folks at</p> <p>13 IEA at that time?</p> <p>14 MR. RAY: Object to form.</p> <p>15 A I would not have been involved in that, so I</p> <p>16 don't know the answer.</p> <p>17 Q (BY MS. NAGLE) Who would have -- who would have</p> <p>18 been involved in communicating that to IEA?</p> <p>19 MR. RAY: Object to form.</p> <p>20 A I don't know exactly who would have been the</p> <p>21 person. It's possible maybe Nick Lincon or someone in his</p> <p>22 type of capacity would have better knowledge of who would</p> <p>23 have given a direction.</p> <p>24 MS. NAGLE: Okay. All right. I think -- with</p> <p>25 that, I think I have concluded all the questioning that I</p>	<p>Page 112</p> <p>1 and I can't remember if she asked you if you had taken</p> <p>2 depositions in the past. Have you?</p> <p>3 A I have not. She did ask me, I think.</p> <p>4 Q Okay. So maybe looking through my notes I</p> <p>5 missed it. And currently your employer is Enel Green</p> <p>6 Power North America, correct?</p> <p>7 A That is correct.</p> <p>8 Q And -- because they purchased part -- consumed</p> <p>9 Tradewinds Energy a couple years ago, correct?</p> <p>10 MR. RAY: Object to form.</p> <p>11 A Early 2019, they purchased a portion of</p> <p>12 Tradewind Energy and sold another portion, and I went</p> <p>13 along with the transaction.</p> <p>14 MS. NAGLE: Okay. I'd like to bring up</p> <p>15 Exhibit 90 which has previously been entered today. I</p> <p>16 think it's Osage Wind Priv 427. Do you mind pulling that</p> <p>17 up on the screen?</p> <p>18 Q (BY MR. FIELDS) Mr. Weigel, this is one of the</p> <p>19 email chains that we looked at earlier this morning. I</p> <p>20 just have a couple follow-up questions.</p> <p>21 A Okay.</p> <p>22 Q Okay. I'll scroll to the end.</p> <p>23 MR. FIELDS: Or if, Michelle, you don't mind</p> <p>24 scrolling to the end, just to give Mr. Weigel a taste</p> <p>25 again of where it starts, and we can kind of work our way</p>
<p>Page 111</p> <p>1 have. Thank you so much, Mr. Weigel, for your time and</p> <p>2 your patience. And I would assume that we want to break</p> <p>3 for lunch before turning to the United States.</p> <p>4 MR. FIELDS: Yes. That would be our request.</p> <p>5 MS. NAGLE: Okay. So I think we can go off the</p> <p>6 record.</p> <p>7 THE VIDEOGRAPHER: We are off the record at</p> <p>8 12:14.</p> <p>9 (Break taken.)</p> <p>10 THE VIDEOGRAPHER: We are back on the record at</p> <p>11 1:01.</p> <p>12 CROSS-EXAMINATION</p> <p>13 BY MR. FIELDS:</p> <p>14 Q Hi, Mr. Weigel. My name's Nolan Fields. I'm an</p> <p>15 assistant U.S. attorney here in Tulsa. I'm going to</p> <p>16 follow up on some of the things that Mary Katherine</p> <p>17 already asked you, and then I might go into a couple new</p> <p>18 areas as well, but I'll try to be respectful of your time,</p> <p>19 as I'm sure we all want to get this through as quickly as</p> <p>20 possible.</p> <p>21 A Okay.</p> <p>22 Q I want to remind you that you're still under</p> <p>23 oath with the court reporter.</p> <p>24 When we started out, Ms. Nagle asked you a</p> <p>25 couple of questions about your background and experience,</p>	<p>Page 113</p> <p>1 up.</p> <p>2 The beginning, so I think it starts out with an</p> <p>3 email from Ian Shavitz, an attorney who represented the</p> <p>4 Osage Minerals Council. You can start scrolling the other</p> <p>5 way. And he sent an email on approximately -- scroll up</p> <p>6 so we can see the -- when he sent it.</p> <p>7 Q (BY MR. FIELDS) On October 10, 2013 to</p> <p>8 Mr. Freeman. I think he was the CEO of Tradewinds Energy</p> <p>9 at the time, and Mr. Boyce of Wind Capital Group and cc'ed</p> <p>10 these additional people. This is that letter from the</p> <p>11 Osage Minerals Council where they raise the issue of the</p> <p>12 minerals permit potentially being needed. Do you kind of</p> <p>13 remember talking about that this morning?</p> <p>14 A I do. Remind me, the attachment is the one that</p> <p>15 asks the details --</p> <p>16 Q Yes.</p> <p>17 A -- of how big and how wide and stuff?</p> <p>18 Q Yes. Based on the date, I believe it's the</p> <p>19 October 10, 2013 letter from Chairman Yates to those CEOs.</p> <p>20 A I do recall that.</p> <p>21 Q Okay.</p> <p>22 MR. FIELDS: Keep scrolling, Michelle, back up</p> <p>23 so we can kind of work our way back up the email chain.</p> <p>24 Q (BY MR. FIELDS) And then it looks like</p> <p>25 Mr. Freeman forwards it to Mr. -- or -- yeah, forwards it,</p>

<p style="text-align: right;">Page 114</p> <p>1 asking Rob -- just kind of review that, the body of that</p> <p>2 next email right there, it looks like they're trying to</p> <p>3 figure out which counsel they're going to kind of refer</p> <p>4 this to. Would you agree with that?</p> <p>5 A So to clarify, the email's from George Knapp who</p> <p>6 it says is signed at the bottom, and they're asking</p> <p>7 Tradewinds who we should be referred to.</p> <p>8 Q Yes, sir.</p> <p>9 A Yeah. That -- I agree with that.</p> <p>10 Q That sounds accurate. Okay.</p> <p>11 MR. FIELDS: Keep scrolling up. And then it</p> <p>12 looks like -- scroll back down.</p> <p>13 Q (BY MR. FIELDS) There's another little email in</p> <p>14 the chain there. I just want to work through it so</p> <p>15 there's no surprises, we're all on the same page. Then it</p> <p>16 looks like on October 10, 2013, later in the day at</p> <p>17 5:27 p.m., Mr. Knapp forwards to you the conversation</p> <p>18 below and just -- he's trying to just bring you into this</p> <p>19 email chain, correct?</p> <p>20 MR. FIELDS: Scroll back up so we can see what</p> <p>21 he's receiving.</p> <p>22 Q (BY MR. FIELDS) Would you agree?</p> <p>23 A I would agree with that.</p> <p>24 Q Okay.</p> <p>25 MR. FIELDS: Keep scrolling up, please. Okay.</p>	<p style="text-align: right;">Page 116</p> <p>1 stop the project involved bald eagle permits, correct?</p> <p>2 A That's correct.</p> <p>3 Q And so this third iteration at least in these</p> <p>4 examples we're talking about right now would have been</p> <p>5 this mining permit, correct?</p> <p>6 MR. RAY: Object to form.</p> <p>7 A I believe I also mentioned the conditional use</p> <p>8 permit process and hearings. But you're correct, this was</p> <p>9 the next.</p> <p>10 Q (BY MR. FIELDS) Thank you for correcting me. I</p> <p>11 think you're right, you did bring that up. So four</p> <p>12 discrete legal attempts or avenues to potentially sideline</p> <p>13 this project. Is that a fair assessment?</p> <p>14 MR. RAY: Object to form.</p> <p>15 A That would be my reason for writing that I was</p> <p>16 not surprised is that I was characterizing it that way in</p> <p>17 this email.</p> <p>18 Q (BY MR. FIELDS) And I believe you also stated in</p> <p>19 your previous testimony, you said, quote "It's hard to</p> <p>20 take the Osage Nation seriously," close quote, involving</p> <p>21 all these attempts to stop the Osage Wind project,</p> <p>22 correct?</p> <p>23 MR. RAY: Object to form.</p> <p>24 A I don't remember saying it that way, but --</p> <p>25 Q (BY MR. FIELDS) But thinking back on when you</p>
<p style="text-align: right;">Page 115</p> <p>1 Q (BY MR. FIELDS) And then it looks like you</p> <p>2 forward --</p> <p>3 MR. FIELDS: Okay. Scroll back down.</p> <p>4 Q (BY MR. FIELDS) It looks like you forward what</p> <p>5 you received to a larger group including Mr. Neil,</p> <p>6 Mr. Willman, ccing Mr. Freeman and I guess you said at the</p> <p>7 time your boss, Matt Gilhousen, correct?</p> <p>8 A Yes.</p> <p>9 Q And then I'm just looking at the body of that</p> <p>10 email. Give me one second. I think Ms. Nagle already</p> <p>11 asked you why this surprised you, and I believe you said</p> <p>12 it kind of -- you said that it surprised you because -- it</p> <p>13 shouldn't surprise you because it was just another attempt</p> <p>14 by the -- you thought, by the Osage Nation to be a</p> <p>15 roadblock to this project. I might be mischaracterizing</p> <p>16 you, but is that a fair statement?</p> <p>17 MR. RAY: Object to form.</p> <p>18 A I might just say it as this was not surprising</p> <p>19 because it was the latest in a series of attempts to stop</p> <p>20 the project.</p> <p>21 Q (BY MR. FIELDS) And I think some of the other</p> <p>22 attempts you mentioned in the time were, in your testimony</p> <p>23 previously, burying beetles, correct?</p> <p>24 A American Bury Beetle.</p> <p>25 Q Yes. And another attempt that you perceived to</p>	<p style="text-align: right;">Page 117</p> <p>1 crafted this email, how would you describe your state of</p> <p>2 mind? Would you -- were you frustrated with the Osage</p> <p>3 Nation or were you frustrated with the federal government?</p> <p>4 MR. RAY: Object to form.</p> <p>5 A As the project developer, it's -- part of my</p> <p>6 role, like I said first on, was, you know, discover the</p> <p>7 permitting needs, work through the land, real estate</p> <p>8 rights, work through the permitting process, and my job</p> <p>9 function was to accomplish those things, so roadblocks in</p> <p>10 that process would frustrating, and so I would say it's</p> <p>11 not necessarily with either of those parties so much as</p> <p>12 the accomplishment of my role.</p> <p>13 Q (BY MR. FIELDS) Fair enough. But I think that</p> <p>14 you said earlier that it was hard to take the Osage Nation</p> <p>15 seriously, but considering all the things you mentioned or</p> <p>16 at least the burying beetle, the bald eagles, and this</p> <p>17 potential application of a mining permit, do you recognize</p> <p>18 that all of those are federal requirements and not Osage</p> <p>19 Nation sovereign requirements?</p> <p>20 A The burying beetle's federally protected. The</p> <p>21 eagle is the Migratory Bird Treaty Act, which is federal.</p> <p>22 And what was the last one you said?</p> <p>23 Q The mining permit at issue in this litigation,</p> <p>24 federal in nature, not something delineated from the Osage</p> <p>25 Nation's own sovereignty?</p>

<p>Page 118</p> <p>1 MR. RAY: Object to form.</p> <p>2 A Yeah. I'm not -- I'm not sure I quite</p> <p>3 understand.</p> <p>4 Q (BY MR. FIELDS) Let me put it -- I guess the --</p> <p>5 let me make it a little clearer. The burying beetles were</p> <p>6 required by the -- or were covered under a federal</p> <p>7 regulation, the bald eagles permit was controlled by a</p> <p>8 federal regulation, and this Osage minerals mining permit</p> <p>9 that is at issue in this litigation was controlled by</p> <p>10 federal -- a federal regulation?</p> <p>11 MR. RAY: Object to form.</p> <p>12 A I think that's correct.</p> <p>13 Q (BY MR. FIELDS) Okay. So going back to the</p> <p>14 email, there in the next sentence, you say, "Let's confer</p> <p>15 about whether or not PS needs support on this." You --</p> <p>16 who are you -- is it a person or a company you were</p> <p>17 referring to? What's "PS"?</p> <p>18 A PS is short for Polsinelli, which would have</p> <p>19 been the law firm that Darren and Steve work for.</p> <p>20 Q Okay. Thank you. Can you hear me still?</p> <p>21 A Yes.</p> <p>22 Q Okay. Perfect. We thought we lost connection.</p> <p>23 I appreciate your patience.</p> <p>24 Okay. So going to the next -- or continuing on.</p> <p>25 So PS is the name of the law firm. Could you read that</p>	<p>Page 120</p> <p>1 Steve, but this question ultimately resulted in Modrall</p> <p>2 Sperling and the memo that we were talking about earlier</p> <p>3 today.</p> <p>4 Q Okay. Perfect. Thank you so much. So the</p> <p>5 date --</p> <p>6 MR. FIELDS: Scroll up a little, Michelle. Keep</p> <p>7 scrolling up.</p> <p>8 Q (BY MR. FIELDS) So to -- to kind of tie a bow on</p> <p>9 what you just said, so it looks like Darren Neil forwarded</p> <p>10 the substance of the emails below, including an</p> <p>11 attachment, to Lynn Slade at the Modrall Sperling firm,</p> <p>12 correct?</p> <p>13 A Yes.</p> <p>14 Q And so this was on October 11, 2013, and the</p> <p>15 previous testimony this morning you gave was that the memo</p> <p>16 that Modrall Sperling drafted that provided legal advice</p> <p>17 to you on October -- dated October 21, 2013 was the</p> <p>18 primary and legal analysis that you used to feel</p> <p>19 comfortable that a permit was not required, correct?</p> <p>20 A That is, yes, correct.</p> <p>21 Q So this -- if we get the timing right, Modrall</p> <p>22 would have potentially been brought in, based on this</p> <p>23 email chain, somewhere around October 11, 2013 regarding</p> <p>24 this particular issue, and then around 20 days later, they</p> <p>25 would have cranked out the memo that then you relied upon?</p>
<p>Page 119</p> <p>1 whole -- the entirety of that sentence that begins "let's</p> <p>2 confer about" out loud?</p> <p>3 A "Let's confer about whether or not PS needs</p> <p>4 support on this."</p> <p>5 Q So you can still see the exhibit right now?</p> <p>6 A I can, yes.</p> <p>7 Q Okay. We were having technical issues on our</p> <p>8 side, so as long as you can see it, that's all I care</p> <p>9 about.</p> <p>10 A Yes. I can.</p> <p>11 Q So what did you mean when you said "whether or</p> <p>12 not PS needs support on this"? What does that mean?</p> <p>13 A As with all issues that are legal in nature at</p> <p>14 these projects, Polsinelli was our general support for</p> <p>15 real estate and commercial reasons, but it was not</p> <p>16 uncommon to have them bring in experts where needed and</p> <p>17 kind of help us find the right representation or support,</p> <p>18 which I believe was my question relative to this inquiry</p> <p>19 was whether or not Polsinelli would have the correct level</p> <p>20 of experience to handle this or if they needed external</p> <p>21 support.</p> <p>22 Q And so who or what firm came in as that expert</p> <p>23 support that was ultimately brought in?</p> <p>24 A Yeah, I don't know all the discussions that the</p> <p>25 owners Matt and Rob had with Polsinelli with Darren and</p>	<p>Page 121</p> <p>1 MR. RAY: Object to form.</p> <p>2 A Yeah. The dates are in the record. That's my</p> <p>3 recollection of how it went.</p> <p>4 MR. RAY: We can hear you.</p> <p>5 MS. NAGLE: Okay. Good. For some reason, we</p> <p>6 weren't getting the feedback. Sorry. I don't know why</p> <p>7 our connection is having issues. I'd love to blame the</p> <p>8 federal government, but I don't want to do that.</p> <p>9 Okay. So as a follow up, I guess since you took</p> <p>10 that exhibit down, would you pull up Exhibit 94, which is</p> <p>11 Osage Wind Priv 615.</p> <p>12 Q (BY MR. FIELDS) While she's pulling that up,</p> <p>13 Mr. Weigel, this is another email that we reviewed this</p> <p>14 morning. I just have a couple follow-up questions.</p> <p>15 MR. FIELDS: Okay. Okay. Scroll down a little</p> <p>16 bit so he can kind of just get a general idea of -- I</p> <p>17 think this is only a one -- or I guess it's a two page</p> <p>18 exhibit. On the second page, the original email that was</p> <p>19 sent, that was from Matt Gilhousen on October 25, 2013.</p> <p>20 Scroll back up so he can see that's the end of</p> <p>21 it. Perfect.</p> <p>22 Q (BY MR. FIELDS) Matt Gilhousen to Lynn Slade,</p> <p>23 Bill Scott, Willman, Freeman, and you, on October 25,</p> <p>24 2013, and Mr. Gilhousen is asking for specific language of</p> <p>25 the statutes that apply to this mineral permit. Is that a</p>

<p>Page 122</p> <p>1 fair summary of what he's asking?</p> <p>2 A Yes.</p> <p>3 Q Okay.</p> <p>4 MR. FIELDS: Scroll up so they can see the rest,</p> <p>5 if you don't mind, please.</p> <p>6 Q (BY MR. FIELDS) And then the same date, it looks</p> <p>7 like Mr. Slade responds with, as requested, a summary of</p> <p>8 the language in the statutes. Scroll up a little more so</p> <p>9 you can see it's the same day.</p> <p>10 Okay. So they're working hard for you, and at</p> <p>11 5:00, whatever time this email comes through, the language</p> <p>12 for the applicable statutes in their mind comes through.</p> <p>13 And if you scroll down a little bit, would you say that's</p> <p>14 a fair assessment of what Mr. Slade provided, a summary of</p> <p>15 the language of the statutes they believe were applicable?</p> <p>16 MR. RAY: Object to form.</p> <p>17 A Yeah. I can't comport to understand what this</p> <p>18 is going to be used for. Matt sent the email. You can</p> <p>19 ask him what he needed this information for. I certainly</p> <p>20 don't recall this specific language existing for any</p> <p>21 longer than as you have it here on the screen. The memo</p> <p>22 became kind of the main -- the main source of this</p> <p>23 information, which was not, you know, that many days</p> <p>24 later.</p> <p>25 Q (BY MR. FIELDS) Yes, sir. I would not disagree</p>	<p>Page 124</p> <p>1 it evolve with additional legal analysis you received from</p> <p>2 counsel on the topic?</p> <p>3 MR. RAY: Object to form.</p> <p>4 A Yeah. I think -- I think the research evolved.</p> <p>5 The opinion that was at the end of the memo was relied</p> <p>6 upon throughout the process.</p> <p>7 Q (BY MR. FIELDS) Do you recall reviewing drafts</p> <p>8 of the October 31, 2013 memo before it was finalized with</p> <p>9 that date?</p> <p>10 A I do not, and that wouldn't have been typical to</p> <p>11 have at Tradewind or at least in my role.</p> <p>12 Q Are you aware if Tradewind Energy ever</p> <p>13 considered a legal malpractice claim against Modrall</p> <p>14 Sperling?</p> <p>15 MR. RAY: Object to form.</p> <p>16 A I am not aware of that, no.</p> <p>17 Q (BY MR. FIELDS) Are you aware if Enel Green</p> <p>18 Power North America ever considered a legal malpractice</p> <p>19 claim against Modrall Sperling?</p> <p>20 MR. RAY: Object to form.</p> <p>21 A I am not aware.</p> <p>22 Q (BY MR. FIELDS) Okay. Thank you. Okay. I'm</p> <p>23 going to pull up another email chain.</p> <p>24 MR. FIELDS: Michelle, could you pull up Osage</p> <p>25 Wind Priv 000128.</p>
<p>Page 123</p> <p>1 with you. So this -- these statutes were provided on</p> <p>2 October 25th, and they looked to be just a summary of the</p> <p>3 statutes. There's no analysis that you relied upon in</p> <p>4 this particular email, correct?</p> <p>5 A Yeah. This email was not what the company</p> <p>6 relied on or what I relied on to form opinion.</p> <p>7 Q So what you or the company relied on was the</p> <p>8 subsequent memo that was dated October 31, 2013, correct?</p> <p>9 A I think when I say memo, I mean the memo that</p> <p>10 started in 2013 and, of course, I see that kind of -- the</p> <p>11 ultimate memo as being one thing, despite there being some</p> <p>12 technical difficulties or technical differences as were</p> <p>13 presented this morning. But that memo in its general</p> <p>14 sense was what was relied upon.</p> <p>15 Q Yes, sir. Thank you. So speaking of -- to kind</p> <p>16 of expand on that, it's your position then that the memo</p> <p>17 dated October 31, 2013 was not the only document that you</p> <p>18 relied upon. What you're saying is that as that memo</p> <p>19 evolved over the next year or so to have another</p> <p>20 iteration, you were reviewing whatever legal counsel was</p> <p>21 providing you, correct?</p> <p>22 A I think it's safe to say all information that we</p> <p>23 received was taken into account.</p> <p>24 Q I guess maybe a better way to ask it is was your</p> <p>25 reliance static based on the October 31, 2013 memo or did</p>	<p>Page 125</p> <p>1 Q (BY MR. FIELDS) We're putting this one up,</p> <p>2 Aaron. Thanks for being patient.</p> <p>3 A Yeah. Sure. No worries.</p> <p>4 Q Okay. This is a rather long email chain. I</p> <p>5 think it goes back maybe like 16 pages, and so I'm going</p> <p>6 to do my best. If it's okay with you, I'm going to have</p> <p>7 Michelle scroll down all the way to the bottom so that you</p> <p>8 can see what the context is so that you're not surprised.</p> <p>9 Okay?</p> <p>10 So it looks like at least the most recent one at</p> <p>11 the top was dated October 14, 2014, but as she scrolls</p> <p>12 down to the very bottom, we'll just kind of work our way</p> <p>13 through it from the bottom. I believe it starts -- it</p> <p>14 starts about a week earlier around October 7, 2014. You</p> <p>15 can just zoom all the way down there and then we'll work</p> <p>16 our way back up.</p> <p>17 Okay. So there's some legal disclaimers at the</p> <p>18 bottom of the emails, and then it looks like this is the</p> <p>19 first email in the chain.</p> <p>20 MR. FIELDS: Scroll up a little more. Go up</p> <p>21 above the next page break. Okay. This is kind of where</p> <p>22 it starts.</p> <p>23 Q (BY MR. FIELDS) On October 7, 2014, a man by the</p> <p>24 name of George Merritt, at an email address at</p> <p>25 harriscommunications.com sends an email to some guys.</p>

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<p>1 I'm not sure who they are. I guess we'll -- and then</p> <p>2 let's read a little bit of the content. Let's scroll down</p> <p>3 a little. Okay. Perfect.</p> <p>4 Take a look at this, the subject -- or the body</p> <p>5 of this email real quick. I'll give you a chance to read</p> <p>6 it, and then I'll ask you a quick question, Mr. Weigel.</p> <p>7 Okay?</p> <p>8 A Okay. I think I got it.</p> <p>9 Q Okay. So it looks like someone from the Tulsa</p> <p>10 World was looking to speak with you about the wind farm</p> <p>11 under construction in Osage County, correct?</p> <p>12 A That looks correct, yes.</p> <p>13 Q Okay. And who is George Merritt?</p> <p>14 A George Merritt would have been an employee at a</p> <p>15 company hired by Tradewind to help us with public</p> <p>16 relations, essentially.</p> <p>17 Q And would that have been normal pattern and</p> <p>18 practice for a wind project that you all were in business</p> <p>19 development for?</p> <p>20 A Absolutely.</p> <p>21 Q And had you worked with this company before in</p> <p>22 the past on other projects?</p> <p>23 A We had a relationship with Harris previously. I</p> <p>24 don't know if I specifically had worked with them, but</p> <p>25 they helped us in Oklahoma throughout this entire time</p>	<p>1 like they're continuing a discussion about this Tulsa</p> <p>2 World reporter, and maybe the question got more specific.</p> <p>3 Do you mind kind of reading over that part that you can</p> <p>4 see that email right there? And I'll just leave it there</p> <p>5 for a second. Tell me when you're -- you've kind of</p> <p>6 skimmed through it.</p> <p>7 A Okay.</p> <p>8 Q So initially in the email chain at the</p> <p>9 beginning, Mr. Merritt contacted you and was saying, hey,</p> <p>10 there's this question from the Tulsa World, they're</p> <p>11 working on this article, and then as the email chain</p> <p>12 progresses here, he got a little more specific, and the</p> <p>13 reporter asks if they're aware of the complaints and</p> <p>14 whether we had a reaction, I guess "we" being the</p> <p>15 defendants or Enel Green Power North America, correct?</p> <p>16 A I understand it to mean the Osage project had a</p> <p>17 reaction.</p> <p>18 Q Yes, sir. Okay. Let me keep scrolling up.</p> <p>19 MR. FIELDS: Would you scroll up another page,</p> <p>20 Michelle, all the way up to 139, two pages up. This is</p> <p>21 it. Yeah.</p> <p>22 Q (BY MR. FIELDS) So I'm going to ask you a quick</p> <p>23 question about this part. So still on October 8, 2014,</p> <p>24 still from Michaela DeGennaro, now an expanded group</p> <p>25 including Mr. Champagne, Ms. Heredia, and you're still</p>
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<p>1 frame and I think probably, you know, some time before.</p> <p>2 Q So when you say they helped you in Oklahoma, was</p> <p>3 that based on your recollection on this, the Osage Wind</p> <p>4 project and the Mustang Run project?</p> <p>5 A No. And I guess its -- its been some time, so</p> <p>6 my recollection is that we, you know, at the time, were</p> <p>7 working on many projects in Oklahoma, including some that</p> <p>8 are not in Osage County, other counties throughout the</p> <p>9 state, and I believe at this time, Harris Communications</p> <p>10 was supporting more than just this one project in just</p> <p>11 this one county, but others instead, also.</p> <p>12 Q Thank you so much. I appreciate that.</p> <p>13 MR. FIELDS: Okay. Could you scroll up,</p> <p>14 Michelle, maybe a whole page to Osage Wind Privilege 141.</p> <p>15 Keep scrolling up, I think. Yeah. Keep scrolling up.</p> <p>16 Q (BY MR. FIELDS) So I'm not going through every</p> <p>17 single email and the chain. I'm just kind of focusing on</p> <p>18 the ones where I had questions, if that's okay with you.</p> <p>19 So at the top of this next page, it looks like Mr.</p> <p>20 Merritt, on October 8, 2014 at 4:44 p.m., sends an email</p> <p>21 to -- is it Mr. DeGennaro or Ms. DeGennaro? I'm not sure</p> <p>22 which one. Maybe you know.</p> <p>23 A Michaela DeGennaro.</p> <p>24 Q Oh, Michaela. Perfect. Thank you so much.</p> <p>25 Sends this email and you're cc'ed on this, and it looks</p>	<p>1 cc'd on this, so you're still in the loop, still talking</p> <p>2 about the Tulsa World article. I'm going to let you kind</p> <p>3 of skim over that real quick.</p> <p>4 MR. FIELDS: Thank you, Michelle.</p> <p>5 Q (BY MR. FIELDS) I'll leave it there real quick.</p> <p>6 Let me know when you're ready.</p> <p>7 A Okay. I'm ready.</p> <p>8 Q Do you -- do you happen to know why EGPNA was</p> <p>9 trying to not be visible to the media at this time?</p> <p>10 A Yeah. I can't speak specifically to in this</p> <p>11 context what Michaela was implying here. I will say</p> <p>12 her -- her role as the head of communications and in all</p> <p>13 prior projects we had done they tend to want to announce</p> <p>14 it before answering questions about it as a matter of Enel</p> <p>15 process as I had seen other projects go.</p> <p>16 Q Okay. And then I guess the rest of that email,</p> <p>17 the second paragraph --</p> <p>18 MR. FIELDS: You can leave it there.</p> <p>19 Q (BY MR. FIELDS) -- says, "So this would be</p> <p>20 another reason to keep the answer general and maybe just</p> <p>21 reword Steve's reply to say the project is being</p> <p>22 constructed in compliance with all permits and</p> <p>23 requirements of law and without mentioning EGPNA." So if</p> <p>24 I understand that correctly, did you -- would you think</p> <p>25 that to be Michaela's -- her draft of what the response to</p>

<p>1 the reporter should be?</p> <p>2 A You'd have to ask her what she meant by her own</p> <p>3 email. Sorry.</p> <p>4 Q What did you -- what did you understand it to</p> <p>5 mean since you were cc'ed on the email then?</p> <p>6 A Yeah. Again, that was the response that was</p> <p>7 suggested by Steve. She's seems agreeing.</p> <p>8 Q Okay.</p> <p>9 MR. FIELDS: So scroll down a little bit,</p> <p>10 Michelle. I guess I should go the other way, actually.</p> <p>11 Q (BY MR. FIELDS) So I guess Steve's contribution</p> <p>12 just before that -- so Steve Champagne, October 8, 2014,</p> <p>13 at 5:43 just before that to the same group had said, "I</p> <p>14 think replying with more detail than I suggested implies</p> <p>15 we're giving some credibility to their assertions. I'd</p> <p>16 rather not, but this is Michaela's call." So would you</p> <p>17 say that Mr. Champagne was deferring to Michaela?</p> <p>18 MR. RAY: Object to form.</p> <p>19 A Michaela's job is the head of communications,</p> <p>20 so, I think.</p> <p>21 Q (BY MR. FIELDS) And what was Steve's job? He's</p> <p>22 the legal counsel internally for Tradewind -- or for</p> <p>23 EGPNA? One of the attorneys, right?</p> <p>24 A I don't know what his specific title was. If he</p> <p>25 was the legal department, I don't know.</p>	<p>1 correct?</p> <p>2 A That was what I was suggesting.</p> <p>3 Q Did you believe that to be true at the time?</p> <p>4 A We had communicated to the BIA by a letter the</p> <p>5 plans and had not been told one was required, despite it</p> <p>6 being arisen, you know, a year prior to this. My belief</p> <p>7 was that if it was an issue, we would know about it by</p> <p>8 know. If it was their opinion, we would have known about</p> <p>9 it by now.</p> <p>10 Q So if I understand this correctly, it was -- the</p> <p>11 lack of communication was acquiescence in your mind that</p> <p>12 BIA did not have a problem with the project?</p> <p>13 MR. RAY: Object to the form.</p> <p>14 A The fact that they had been -- the communication</p> <p>15 had happened and the intent was clear should have been, in</p> <p>16 my mind, expectant of a response if one was deserved, yes.</p> <p>17 Q (BY MR. FIELDS) So when you say "the intent was</p> <p>18 clear", well, the intent on your end, but how could you</p> <p>19 possibly know the intent of the BIA if there was silence?</p> <p>20 A Yeah. That is a fair statement that I, in this</p> <p>21 case, should not be representing the BIA's opinion</p> <p>22 publicly, and so ultimately this wasn't printed.</p> <p>23 Q Right. This is the intermittent process on how</p> <p>24 to respond to a potential Tulsa World article, correct?</p> <p>25 A That's what's happening in the email chain, yes.</p>
<p>1 Q Okay.</p> <p>2 MR. FIELDS: Keep scrolling. I guess at the top</p> <p>3 of whatever that direction is -- okay. On this 138, I</p> <p>4 think I'm going to have some questions here.</p> <p>5 Q (BY MR. FIELDS) Okay. I'll try to take this</p> <p>6 piece by piece. So there's a snippet of an email at the</p> <p>7 bottom. We can ignore that. But I want the email that</p> <p>8 you sent right here, so this is perfect.</p> <p>9 So still going up in this email chain, October</p> <p>10 8, 2014, now at 6:23 p.m., you compose this email with</p> <p>11 these two paragraphs. I'll let you look at that for a</p> <p>12 second before I ask you a couple questions.</p> <p>13 A Okay.</p> <p>14 Q Okay. So in that second paragraph that begins</p> <p>15 Tradewind Energy, it says, "Tradewind Energy and the</p> <p>16 Bureau of Indian Affairs have been in direct</p> <p>17 communication. We described the mechanics of the process</p> <p>18 which is still currently underway to install wind</p> <p>19 turbine -- install turbine foundations, and both parties</p> <p>20 reached an agreement that those actions as described do</p> <p>21 not require a permit from the BIA. This project is being</p> <p>22 constructed in compliance with all permits and</p> <p>23 requirements of law." So is it your suggestion -- your</p> <p>24 suggestion was to state that Tradewind Energy and BIA were</p> <p>25 in an agreement that no mining permit was required,</p>	<p>1 Q So in -- so in other words, you perceived the</p> <p>2 BIA's silence to be the BIA's agreement that a permit was</p> <p>3 not required?</p> <p>4 A My frame of mind was that we had researched this</p> <p>5 extensively, we had a memo, and I felt then and still feel</p> <p>6 strongly what we were doing was not mining and that the</p> <p>7 BIA had had an opportunity to weigh in and had not told us</p> <p>8 not to a year prior.</p> <p>9 Q But a year prior you hadn't started excavation,</p> <p>10 construction, because that didn't start until September of</p> <p>11 2014, correct?</p> <p>12 A Yeah. I can't recall the exact date that</p> <p>13 foundations started being dug.</p> <p>14 Q Okay. Fair enough.</p> <p>15 A It would have been around that time, fall of</p> <p>16 2014.</p> <p>17 Q Right. So the paragraph right above that, we</p> <p>18 can respond to this, after -- I guess in the second</p> <p>19 sentence, it kind of -- the second line from the top, it</p> <p>20 continues on, "Steve's response sounds like we have</p> <p>21 something to hide. We don't. Your average reader is</p> <p>22 likely to think we dodged the question, and that's not</p> <p>23 good local PR for us. I suggest something like this," and</p> <p>24 then you gave your recommendation. So is it fair to say</p> <p>25 that Mr. Champagne's proposal to not respond, as it would</p>

<p>Page 134</p> <p>1 give credit to the Osage's assertions, meant that you felt</p> <p>2 it would be perceived that the defendants had something to</p> <p>3 hide?</p> <p>4 MR. RAY: Object to form.</p> <p>5 A My personal opinion on the phrase "no comment"</p> <p>6 is that it's a weak PR response in this situation and</p> <p>7 others.</p> <p>8 Q (BY MR. FIELDS) Fair enough. Scrolling up above</p> <p>9 to the next proceeding email.</p> <p>10 MR. FIELDS: Keep going up a little more. Keep</p> <p>11 going. Right there. Perfect.</p> <p>12 Q (BY MR. FIELDS) So Mr. Merritt responds a couple</p> <p>13 minutes later, five minutes later, just to you, and then</p> <p>14 he -- or, sorry, to you and then he ccs the group, and</p> <p>15 then he says, "By any chance, Aaron, do you think the BIA</p> <p>16 would -- do you think the BIA would give that response?</p> <p>17 If it's that simple, it would be great to have the agency</p> <p>18 stop this issue cold." So would you say it's a fair</p> <p>19 representation that Mr. Merritt did not think that your</p> <p>20 suggested statement that both parties reached an agreement</p> <p>21 on those actions as described does not require a permit</p> <p>22 from the BIA was not a good way to go forward?</p> <p>23 MR. RAY: Object to form.</p> <p>24 A You'd have to ask him what his email meant.</p> <p>25 He's recommending a different path. He's recommending we</p>	<p>Page 136</p> <p>1 A Okay.</p> <p>2 Q Okay. So in the first paragraph, you start it</p> <p>3 off with, "Let's get this language ready to send..." and</p> <p>4 I'll skip down to the one, two, three, fourth line, "but</p> <p>5 also one that doesn't presume to answer the question for</p> <p>6 BIA." So at this point, two days later after</p> <p>7 Mr. Merritt's suggestion and maybe receipt or knowledge of</p> <p>8 the October 9th cease and desist letter, you've now</p> <p>9 removed your language from the draft asserting that TWE</p> <p>10 and BIA agreed that a permit was not needed, correct?</p> <p>11 MR. RAY: Object to form.</p> <p>12 A The fact that its been removed from the</p> <p>13 suggestion is true in my email here. Whether it's related</p> <p>14 to the receipt of that email, I can't tell you. I don't</p> <p>15 know about the timing of that. I believe there was some</p> <p>16 delay in the date of the letter and the date of me</p> <p>17 personally seeing it.</p> <p>18 Q (BY MR. FIELDS) Fair enough. But at the same</p> <p>19 time, one way or another, that language got pulled out,</p> <p>20 and now your suggestion edits are in blue below. Even</p> <p>21 though they're not in blue, that second paragraph is now</p> <p>22 your proposed more refined statement?</p> <p>23 A Yes.</p> <p>24 Q Okay. And in summary, it basically just says</p> <p>25 that TWE and BIA had been in direct communication about</p>
<p>Page 135</p> <p>1 would need the BIA to say that, not for me to say that,</p> <p>2 for us to say that, which is a fair response, I believe.</p> <p>3 Q (BY MR. FIELDS) And what's your recollection of</p> <p>4 how the BIA responded?</p> <p>5 A You'll have to ask a more specific question than</p> <p>6 that. I'm not sure what you're talking about.</p> <p>7 Q Well, this is on October 8th. On October 9th, I</p> <p>8 believe that the BIA sent a letter to the CEO of Enel</p> <p>9 saying that there's a cease and desist that was being</p> <p>10 ordered. So I think it's fair that Mr. Merritt was</p> <p>11 correct and that your statement would have been dead in</p> <p>12 the water, don't you think?</p> <p>13 MR. RAY: Object to form.</p> <p>14 A Yeah. I'm aware the BIA sent that letter.</p> <p>15 Whether it was related to this, I can't tell you.</p> <p>16 Q (BY MR. FIELDS) Okay. Thank you. All right.</p> <p>17 Let's move on.</p> <p>18 MR. FIELDS: Can you scroll up to page 136,</p> <p>19 about two pages up. So I'm skipping some emails in</p> <p>20 progression of what the comment would look like, so --</p> <p>21 okay. This is perfect.</p> <p>22 Q (BY MR. FIELDS) So on October 10, 2014, I guess</p> <p>23 we're two days later now, at 1:41 in the afternoon, you</p> <p>24 write this email. Can you kind of review this real quick,</p> <p>25 and then I'll ask you a question about it.</p>	<p>Page 137</p> <p>1 the process including those involved to install the</p> <p>2 foundations. Based on those communications, the project</p> <p>3 is not -- the project is not seeking a permit. So we've</p> <p>4 gone from agreement with BIA and Tradewind Energy to just</p> <p>5 Tradewind Energy's not seeking a permit, correct?</p> <p>6 MR. RAY: Object to form.</p> <p>7 A The language has removed the agreement statement</p> <p>8 and it now says only what we intend to do.</p> <p>9 MR. FIELDS: Okay. Michelle, you can scroll up,</p> <p>10 please, to 135, the next page up.</p> <p>11 Okay. This is a little funky because the email</p> <p>12 gets carried from one page to another, so can you scroll</p> <p>13 up a little bit to the previous page to see the date and</p> <p>14 time and then we'll scroll back down.</p> <p>15 So this is October 13th from Ms. Heredia, 1:27</p> <p>16 in the afternoon someone's time. Scroll down a little so</p> <p>17 we can see.</p> <p>18 Q (BY MR. FIELDS) It looks like it's going to</p> <p>19 Merritt, you, and Mr. Weigel. And that's perfect. Do you</p> <p>20 mind just kind of looking the body of that email over real</p> <p>21 quick, and then I'll ask you a quick question?</p> <p>22 A Okay.</p> <p>23 Q Okay. So based on the second to last sentence</p> <p>24 of the first paragraph, this news broke over the weekend</p> <p>25 via a BIA letter dated September 9th and posted on the</p>

<p>Page 138</p> <p>1 Osage website. "We've yet to receive the BIA letter from</p> <p>2 EGPNA." A do you think that's some of the delay you were</p> <p>3 talking about in getting the cease and desist letter?</p> <p>4 MR. RAY: Object to form.</p> <p>5 A I think it's pretty clear that she says they</p> <p>6 have yet to receive it.</p> <p>7 Q (BY MR. FIELDS) Yes, sir. Thank you. And so</p> <p>8 Ms. Heredia's kind of qualifying the fact that it's pretty</p> <p>9 likely that the BIA thinks that a sandy soil mining permit</p> <p>10 is going to be required and legal counsel is saying that</p> <p>11 it's not necessary, correct?</p> <p>12 MR. RAY: Object to form.</p> <p>13 A Yeah. I don't want to try to interpret her</p> <p>14 email, but, yes.</p> <p>15 Q (BY MR. FIELDS) Okay. Then what did it mean to</p> <p>16 you?</p> <p>17 A Sorry. Can you say that one more time, the</p> <p>18 question?</p> <p>19 Q If you don't want to interpret her email,</p> <p>20 what -- what do you think it -- you were copied, it was</p> <p>21 sent to you from Ms. Heredia, so what did it mean to you</p> <p>22 at the time?</p> <p>23 A Okay. This says we shouldn't make a statement,</p> <p>24 so she's telling me that this is unfolding and the</p> <p>25 conversation below should be paused until more information</p>	<p>Page 140</p> <p>1 Then the next one looks like a -- maybe a Tulsa</p> <p>2 World article.</p> <p>3 We'll keep scrolling down. Again, I apologize.</p> <p>4 That's just the way it's formatted. Stop right there one</p> <p>5 second.</p> <p>6 So what I care about is you were quoted, I</p> <p>7 think, in this article or you were at least attributed</p> <p>8 right there, so do you mind looking at that paragraph that</p> <p>9 starts "Aaron Weigel, the head of project development"</p> <p>10 real quick. Look at that, and then I'll ask you a</p> <p>11 question.</p> <p>12 A Okay. I've read it.</p> <p>13 Q Okay. Thank you. Thank you, Mr. Weigel. And</p> <p>14 so in the second line, you said Tuesday that "questions</p> <p>15 about the project need to be post to Enel North America,</p> <p>16 the subsidiary of an Italian utility giant that's now</p> <p>17 building the project. However, he said that, generally</p> <p>18 speaking, it's industry practice for the rock excavated</p> <p>19 during construction in wind turbine foundation." So I</p> <p>20 imagine that were you given the direction that were you</p> <p>21 allowed to refer the questions to Enel North America at</p> <p>22 this point because you did so in the article, correct?</p> <p>23 MR. RAY: Object to form.</p> <p>24 A Yeah. I with this response would have been</p> <p>25 directed to say this, right, yes. So we would have had a</p>
<p>Page 139</p> <p>1 is received, the letter being one of those things.</p> <p>2 Q And it's not just a letter, it's a letter saying</p> <p>3 that the BIA thinks you need a sandy soil mining permit.</p> <p>4 So that's a pretty stark event, wouldn't you say?</p> <p>5 A Yeah. I mean, it changes the situation is what</p> <p>6 I would say.</p> <p>7 Q Okay. Fair enough. Thank you.</p> <p>8 MR. FIELDS: Would you scroll up to page 131.</p> <p>9 Okay. So I apologize in general for the way</p> <p>10 this is formatted, but this is the way we received it from</p> <p>11 defense counsel, so we've got to work with what we've got.</p> <p>12 So, actually, could you scroll up to page 129, and it will</p> <p>13 catch the beginning of the email. Keep going. Thank you,</p> <p>14 ma'am. Keep on going. Okay. Perfect right there.</p> <p>15 Q (BY MR. FIELDS) So, again, I might butcher this</p> <p>16 guy's name, but Jack Thirolf sends an email on October 13,</p> <p>17 2014, 3:51 in the afternoon, to you and a group of other</p> <p>18 individuals who are co-defendants. So we're going to</p> <p>19 scroll through those names, and then we'll get to a --</p> <p>20 this is a -- it looks to be a couple of different news</p> <p>21 articles that were describing what was going on with the</p> <p>22 Osage Wind project, this first one that you see right here</p> <p>23 being from what looks to be the Barnsdall Times. But</p> <p>24 we're going to scroll down because I don't really care</p> <p>25 about that right now.</p>	<p>Page 141</p> <p>1 conversation that said please tell the reporter to talk to</p> <p>2 Enel North America, which I did.</p> <p>3 Q (BY MR. FIELDS) Okay. And in the earlier</p> <p>4 portion of the same email chain, I think it was Michaela,</p> <p>5 as you pronounced, DeGennaro, correct, who was the</p> <p>6 communications head at Enel Green Power North America who</p> <p>7 was saying hold off, correct? Two days earlier she was</p> <p>8 saying hold off?</p> <p>9 A I believe she was saying it had not been</p> <p>10 announced yet.</p> <p>11 Q Right.</p> <p>12 A But I'd have to go back and review that to</p> <p>13 specifically see her recommendation.</p> <p>14 Q Yes, sir. But either way, a couple days later</p> <p>15 after saying hold off, don't release it, you got the green</p> <p>16 light, and so you did here at least in this article,</p> <p>17 correct?</p> <p>18 A I did release that Enel North America was the</p> <p>19 owner now.</p> <p>20 Q Do you think that they were willing -- was it</p> <p>21 your understanding that Enel Green Power at that point was</p> <p>22 willing to allow their name to be floated so they could</p> <p>23 better control the spin now that the cease and desist</p> <p>24 letter had been filed and made public?</p> <p>25 A I was not in the conversations to determine</p>

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1 that, nor would I have any idea what their communications
2 department had suggested was the right course of action.

3 **Q But in some way did you feel like the**
4 **responsibility was being taken away from you with**
5 **Tradewind and being -- and moved over to Enel?**

6 **A In my personal view, the signing of the MIPA is**
7 **when that happens. PR is an entirely different thing,**
8 **which is Michaela's realm.**

9 **Q Okay. Thank you. So this whole document chain**
10 **beginning with Osage Wind Priv 128 through what we**
11 **reviewed, I'll submit it as Exhibit 98 just to keep our**
12 **numbers right. I think that's where we're at everybody.**

13 **I think I only have two more email chains -- or**
14 **it's two groups, but I'll do my best to work through them.**
15 **Thank you so much, Mr. Weigel.**

16 **(WHEREUPON, Exhibit 98 was marked for**
17 **identification.)**

18 **MR. FIELDS: Okay. Michelle, the next one I'd**
19 **like to pull up, it's of course not an exhibit yet, but**
20 **it's Osage Wind Priv 000092.**

21 **Q (BY MR. FIELDS) This is another email chain,**
22 **Mr. Weigel. I'm going to have Michelle scroll all the way**
23 **to the bottom. I think there's maybe four emails on this**
24 **chain, but we'll work through them pretty quickly.**
25 **Okay. This is where it starts. Mr. Welch with**

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1 **IEA sends this email to Chris. If you scroll up a little,**
2 **Michelle, I think we'll see from the header, it looks like**
3 **it was Chris Hanson -- to Chris Hanson at IEA and**
4 **Mr. Moskaluk who was, I think, the site coordinator at**
5 **Enel for the project. So there's the substance of that**
6 **email, if you don't mind taking a quick look at that.**

7 **A Okay. Yes.**

8 **Q So to give some context, it looks likes**
9 **Mr. Whiteshield with the BIA was either on site or**
10 **contacted Mr. Welch or someone with IEA and raised the**
11 **issue that a permit was required for crushing operations**
12 **that took place on 9/25/14. Is that a fair summary?**

13 **A That's a fair summary, yes.**

14 **Q Okay.**

15 **MR. FIELDS: So then scroll up to the next email**
16 **where he responds. Thank you, Michelle.**

17 **Q (BY MR. FIELDS) So then this next -- whether**
18 **it's -- I guess it's an email. So I guess it's maybe a**
19 **meeting event. It looks like an appointment, yes, sir,**
20 **and it looks like embedded. It was going from Giuseppe**
21 **DiMarzio to yourself, other Enel Green Power individuals,**
22 **and the topic was Osage Bureau of Indian Affairs, and it**
23 **was set to have the meeting on Tuesday, September 30,**
24 **2014, at 11:30 in the morning, with the agenda to include**
25 **the four items that Mr. DiMarzio had laid out. Is that a**

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1 **fair summary of what it looks to be?**

2 **A Yes.**

3 **Q And, again, so many different names. I know you**
4 **said it earlier. With a company this big, it's swimming**
5 **with people in different positions. Mr. DiMarzio, do you**
6 **recall what his position was at that time?**

7 **A I do not. I know he was on site at the --**

8 **Q Okay.**

9 **A -- facility during construction --**

10 **Q Okay.**

11 **A -- but I don't know what his responsibilities**
12 **were there.**

13 **Q Okay. That's fine. That's helpful. So someone**
14 **on site, Mr. DiMarzio potentially, sets the agenda for**
15 **this meeting, and he reviewed those four agenda items?**

16 **A Yeah.**

17 **Q Can I ask you a question about them? Have you**
18 **had a chance to look at them?**

19 **A Yes.**

20 **Q So this first question is, "Do we need a rock**
21 **crushing permit with the mineral counsel for backfill**
22 **foundations?" That's his first item on the agenda,**
23 **correct?**

24 **A Yes.**

25 **Q And second item is, "If so, can we get it?" Do**

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1 **you think he was implying the rock crushing permit? Is**
2 **that what you thought he meant?**

3 **A "Do we need a rock crushing permit," I think the**
4 **issue is in response to the inspection that happened where**
5 **he was told by a BIA representative that a permit was**
6 **needed for rock crushing. He's asking the question, and**
7 **so let's have a meeting to talk about that particular**
8 **issue.**

9 **Q So is it fair to say number one was do we need**
10 **this rock crushing permit, and then number two, if so, can**
11 **we get it? That's a follow up to number one, correct?**

12 **MR. RAY: Object to form.**

13 **A You'd have to ask him.**

14 **Q (BY MR. FIELDS) Well, what did it mean to you?**
15 **I assume you attended the call or the meeting, so what did**
16 **those agenda items mean to you? Do you think that number**
17 **two was talking about a rock crushing permit, getting it,**
18 **if it was possible?**

19 **A I expected to talk about the sandy soils and**
20 **mining permit on this call --**

21 **Q Okay.**

22 **A -- and the memo we had relative to it.**

23 **Q Well, based on the agenda item for one,**
24 **Mr. DiMarzio's asking if the permit's needed, correct?**

25 **A I don't see a question, but you'd have to ask --**

<p>Page 148</p> <p>1 Q Right.</p> <p>2 A -- him.</p> <p>3 Q You're right. He didn't have a question mark on</p> <p>4 there, but the way he phrased it "do we need", I assume it</p> <p>5 was a question, but I can move on.</p> <p>6 Number three, "If not, should we prepare anyway</p> <p>7 for the strategy for the response." By "if not", do you</p> <p>8 think he's implying if we don't get or need a rock</p> <p>9 crushing permit? Is that what it meant to you?</p> <p>10 A It looks like badly translated Italian which is</p> <p>11 not uncommon for the site guys on the Enel side. He -- I</p> <p>12 would interpret this to be a response to the BIA person</p> <p>13 below who had said something was needed.</p> <p>14 Q Okay.</p> <p>15 A What do we say back.</p> <p>16 Q So staying on number three, "Should we prepare</p> <p>17 anyway for the strategy for the response," so do you</p> <p>18 recall what that strategy was you discussed in the call?</p> <p>19 A I do not. I'm sorry.</p> <p>20 Q Okay. That's fair.</p> <p>21 A Yeah.</p> <p>22 Q Because, I mean, you stated earlier in the</p> <p>23 deposition testimony today that, quote, "you've never been</p> <p>24 uncertain a permit was not required," correct? That's</p> <p>25 your testimony?</p>	<p>Page 148</p> <p>1 had a chance to discuss." So under no uncertain terms</p> <p>2 Mr. Heredia is saying don't crush any more rock until</p> <p>3 we've had this discussion, correct?</p> <p>4 MR. RAY: Object to the form.</p> <p>5 A She's telling Giuseppe.</p> <p>6 Q (BY MR. FIELDS) Right. And that's on</p> <p>7 September 29, 2014 at 9:38, correct? At least when the</p> <p>8 email was sent. Who knows the time zones, right?</p> <p>9 A I would agree that was the time it was sent.</p> <p>10 Q So is it fair to say Joan was ordering a stop to</p> <p>11 rock crushing?</p> <p>12 A No. I can't speak to the chain of command on</p> <p>13 who actually has the authority to do so, whether Giuseppe</p> <p>14 would be the person to stop that.</p> <p>15 Q That's not my question. I appreciate what</p> <p>16 you're -- what you're sharing, but I'm saying it says</p> <p>17 "please do not crush rock", so she's asking him to stop</p> <p>18 crushing rock, at least until the conversation's been had,</p> <p>19 correct?</p> <p>20 MR. RAY: Object to form.</p> <p>21 A That's how I would interpret what she's said.</p> <p>22 Q (BY MR. FIELDS) Okay. Okay. Thank you.</p> <p>23 MR. FIELDS: Then scroll up, Michelle, to the</p> <p>24 next email, which I think is the last one in this chain,</p> <p>25 thankfully. All right. Thank you, ma'am.</p>
<p>Page 147</p> <p>1 A Yeah.</p> <p>2 Q Okay. So let's scroll up more. So there was</p> <p>3 this call that was scheduled for September 30, 2014, 11:30</p> <p>4 in the morning, and then the next item that's up is an</p> <p>5 email that looks to be from Ms. Heredia from Mr. Giuseppe.</p> <p>6 I guess that's still Mr. DiMarzio. I'll let you look at</p> <p>7 that for a second, and then I'll ask you the next</p> <p>8 question.</p> <p>9 A Okay. Go ahead.</p> <p>10 Q Okay. So, "We need to act with an abundance of</p> <p>11 caution. We should not be using materials at the site</p> <p>12 that would otherwise be commercially available. I</p> <p>13 understood backfill would come from an off site quarry.</p> <p>14 We need to discuss with Steve Champagne before proceeding.</p> <p>15 Please do not crush rock further until we have had a</p> <p>16 chance to discuss." So if I understand correctly, "We</p> <p>17 need to discuss with Steve Champagne before proceeding,"</p> <p>18 did you interpret that to mean Joan was saying we're going</p> <p>19 to -- we can't do anything until we talk to Steve before</p> <p>20 we go forward?</p> <p>21 MR. RAY: Object to form.</p> <p>22 A Yeah. She was recommending a discussion with</p> <p>23 Steve.</p> <p>24 Q (BY MR. FIELDS) Okay. And then the last</p> <p>25 sentence, "Please do not crush rock further until we have</p>	<p>Page 149</p> <p>1 Q (BY MR. FIELDS) So here is the following email</p> <p>2 from Ms. Heredia to a number of people -- or from you to</p> <p>3 Mr. Heredia and a number of people, it looks like the next</p> <p>4 day September 30, 2014, at 2:45 a.m. That's pretty early</p> <p>5 in the morning. Do you mind taking a look at that real</p> <p>6 quick, and then I'll ask you a quick question.</p> <p>7 A Okay.</p> <p>8 Q All right. Perfect. So third line, third</p> <p>9 sentence. "I agree we should hit pause until we explain</p> <p>10 that to the BIA." I mean, effectively you're agreeing</p> <p>11 with Ms. Heredia who just said the day earlier to not</p> <p>12 crush rock further until you've had a chance to discuss</p> <p>13 with Steve. Isn't that fair to say?</p> <p>14 MR. RAY: Object to form.</p> <p>15 A The point of this email is not to say rock</p> <p>16 crushing was wrong. In fact, the first three sentences</p> <p>17 are the opposite of that where I just say that we aren't</p> <p>18 in the wrong, but relationships, especially with people</p> <p>19 like the BIA, matter, and I expected that we would</p> <p>20 communicate it in a -- you know, a fair and congenial way</p> <p>21 and make sure we have the conversation.</p> <p>22 Q (BY MR. FIELDS) Well, I appreciate you for</p> <p>23 summarizing that the email did not mean to say rock</p> <p>24 crushing was wrong. I never said that. You said that.</p> <p>25 What I'm asking is if your words were "I agree we should</p>

<p>Page 150</p> <p>1 hit pause until we explain that to the BIA," so regardless 2 of why you were saying that it was your recommendation 3 that the project should hit pause, what did that mean? 4 MR. RAY: Object to form. 5 A My email with my words here saying that I agreed 6 to hit pause is saying that we are going to have to 7 restart crushing, but let's stop because the BIA came out 8 and said stop, and let's communicate about what we believe 9 to be the facts of the case. 10 Q (BY MR. FIELDS) So you're saying that you should 11 restart crushing, so that means you had stopped crushing 12 at some point, correct? 13 A What I'm saying is that we should hit pause. I 14 don't -- I don't know if they -- at this point I suspect 15 they had not stopped, but I don't if they did stop 16 crushing rock. 17 Q So you don't know if they listened, but you're 18 saying, from your perspective, you should at least hit 19 pause right now until -- until otherwise decided? 20 A Yes. I'm suggesting we stop crushing rock. 21 Q Okay. Thank you so much. So let me ask you 22 this. Why would you recommend hitting pause when you 23 previously stated that you were never uncertain a permit 24 was not required? How do you reconcile those two 25 statements?</p>	<p>Page 152</p> <p>1 (WHEREUPON, Exhibits 99 and 100 were marked for 2 identification.) 3 MR. FIELDS: Can you scroll down to the very 4 bottom? Keep on going. 5 Q (BY MR. FIELDS) So, again, some emails and 6 appointments, Mr. Weigel. This looks to be an original 7 appointment that initiated this email chain around Monday, 8 September 29, 2014, at 11:03 p.m., from Mr. Lincon to -- 9 and it could be Lincon, I don't know, I want to be 10 respectful -- to a group including yourself, and the 11 subject was Osage Mineral Rights, to be held the next day, 12 September 30, 2014, at 11:00 a.m. Eastern, correct? 13 A Yeah. That looks right. 14 Q And then you forwarded that above from -- I 15 guess to Nick and some other people. I don't know how all 16 that works. That's technical stuff. We'll scroll up a 17 little more and then we'll get into an actual email that 18 has text, not an appointment. 19 Then it looks like an email from Mr. Heredia 20 that's on this email chain, and it's an email that she is 21 sending to you and another group of similar individuals, 22 whether Tradewind or Enel, and it's dated Wednesday, 23 October 21, 2014, at 12:40 a.m., talking about Osage 24 mineral rights. So do you mind looking that over, 25 Mr. Weigel, and then I'll ask you a couple questions.</p>
<p>Page 151</p> <p>1 A I think that the entire content in context to 2 this email is quite clear. So I appreciate the specific 3 line being called out. I will say pausing to communicate 4 is almost never a bad idea despite if what you believe 5 you're doing is right or not, and especially in my 6 business, relationships, you know, are important to 7 maintain. 8 Q But in this instance, the project excavations 9 and rock crushing did not stop, and despite the cease and 10 desist letter, business as usual continued, didn't it? 11 MR. RAY: Object to form. 12 A That, I don't know. I was not on site. 13 Q (BY MR. FIELDS) So you're not aware if the work 14 stopped. You're saying it could have stopped, you just 15 don't know? 16 A I don't know if it did or did not. 17 Q Okay. Thank you. So this -- this was Osage 18 Wind Priv 000092 and 93. I'll submit that as Exhibit 99 19 so I can keep the exhibits accurate in the record. I 20 apologize to counsel for not doing that on the front end. 21 All right. So we can take that one down. 22 And let's pull up Osage Wind Privilege 000090. 23 All right. And this is going to be Exhibit 100, and I do 24 not believe its been previously admitted. If it has and I 25 missed it in the list, I apologize.</p>	<p>Page 153</p> <p>1 A Okay. 2 Q Okay. So I guess Ms. Heredia spoke with 3 Mr. Whiteshield at the BIA, and she gave a summary of her 4 conversation with him. Is that a fair summary of kind of 5 generally what's happening in the introduction of the 6 paragraph? 7 A I agree with that. 8 Q About in the middle one, two, three, four, five 9 lines in, the sentence begins "I did explain briefly". 10 Could you read that sentence, please? 11 A "I did explain briefly that the Osage is very 12 protective of their oil and gas operations, but that wind 13 and oil and gas can co-exist as we do at many of our 14 sites." 15 Q Thank you. So do you think it's odd that 16 Ms. Heredia, working for Enel, like the -- whatever, the 17 sixth largest public utility in the country or the world 18 or whatever, is describing how she's explaining to this 19 BIA field tech how the Osage is very protective of their 20 oil and gas operations when that's his job? 21 MR. RAY: Object to form. 22 A I can tell you that in Oklahoma, this was not 23 the first site that Tradewind had developed and oil and 24 gas operations are quite heavy down here and that the 25 discussion of the interaction of building a wind farm with</p>

<p>Page 154</p> <p>1 an oil and gas facility is relatively new for a lot of</p> <p>2 people, so I -- that explanation I have heard and/or given</p> <p>3 hundreds of times about how you can build a wind farm</p> <p>4 around active oil and gas operations, and we had done that</p> <p>5 at this point at other sites already.</p> <p>6 Q (BY MR. FIELDS) But had you ever built another</p> <p>7 wind farm in Osage County, Oklahoma up until this point,</p> <p>8 or would this have been the first one?</p> <p>9 A This was the first one in Osage County,</p> <p>10 Oklahoma.</p> <p>11 Q And to your knowledge, would you have ever dealt</p> <p>12 with the Osage Nation Native American tribe in any of your</p> <p>13 wind projects throughout the U.S.?</p> <p>14 A We had not, to my knowledge.</p> <p>15 Q And so would you imagine that the federal</p> <p>16 regulations that were specific to the Osage Nation would</p> <p>17 have applied here in Osage County, Oklahoma, and maybe not</p> <p>18 have applied in the other counties across the U.S. where</p> <p>19 you had other projects? Is that correct?</p> <p>20 MR. RAY: Object to form.</p> <p>21 A I think it's typical for us to review the</p> <p>22 obligations and requirements of law in every location we</p> <p>23 attempt to build in as a separate and independent thing.</p> <p>24 They vary county to county, state to state, city to city.</p> <p>25 Q (BY MR. FIELDS) But do you find it interesting</p>	<p>Page 155</p> <p>1 that Mr. Heredia is lecturing the Osage -- or the BIA</p> <p>2 Osage Agency field tech, petroleum field tech, on how oil</p> <p>3 and gas is something very important to the Osage when his</p> <p>4 complaint had been about rock crushing a different type of</p> <p>5 mineral that had nothing to do with oil and gas?</p> <p>6 MR. RAY: Object to form.</p> <p>7 A I can't speak to the intent or your</p> <p>8 representation of the tone of the discussion as you just</p> <p>9 represented it. I don't know.</p> <p>10 Q (BY MR. FIELDS) Well, what did that mean to you?</p> <p>11 You were on the email. You received it. How did you</p> <p>12 interpret it at the time or now?</p> <p>13 MR. RAY: Object to form.</p> <p>14 A I read what she said when she talked with</p> <p>15 Mr. Whiteshield and absorbed that information as an</p> <p>16 accurate representation of the call.</p> <p>17 Q (BY MR. FIELDS) Did representatives from Enel</p> <p>18 regularly lecture local federal representatives about</p> <p>19 their operations?</p> <p>20 MR. RAY: Object to form.</p> <p>21 A I can't think of a single time I experienced</p> <p>22 that in person.</p> <p>23 Q (BY MR. FIELDS) Okay. Go to the last sentence</p> <p>24 of the last paragraph. It says, "My suggestion is that</p> <p>25 the site can carry on, but we should try to get the letter</p>	<p>Page 156</p> <p>1 to Robin as soon as possible." So if I understand that</p> <p>2 correctly, is that Ms. Heredia saying that the work is</p> <p>3 going to continue? Is that a fair summary?</p> <p>4 MR. RAY: Object to form.</p> <p>5 A It's -- it's unclear to me what she meant by</p> <p>6 "carry on". That could have many definitions.</p> <p>7 Q (BY MR. FIELDS) So what did it mean to you at</p> <p>8 the time?</p> <p>9 A You'd have to ask her. I'm sorry.</p> <p>10 Q I'm asking what -- what -- what did it mean to</p> <p>11 you at the time, since you were one of the recipients on</p> <p>12 the email? What did you think Ms. Heredia saying "my</p> <p>13 suggestion is that the site can carry on" -- I'm just</p> <p>14 asking for your opinion.</p> <p>15 MR. RAY: Object to form.</p> <p>16 A Yeah. I don't know. Sorry.</p> <p>17 Q (BY MR. FIELDS) Okay. Sounds good. So two days</p> <p>18 earlier, Ms. Heredia had recommended stopping rock</p> <p>19 crushing. Now she's saying she suggests the site can</p> <p>20 carry on. You don't think that she was still talking</p> <p>21 about rock crushing, do you?</p> <p>22 A I think it's fair to assume that.</p> <p>23 Q Do you know what changed in those two days?</p> <p>24 A If I'm recalling the email chain we just went</p> <p>25 through, Mr. Whiteshield reached out to construction, it</p>	<p>Page 157</p> <p>1 went up the chain, Joan was identified to take the call,</p> <p>2 Joan took the call, the summary here, she felt</p> <p>3 comfortable based on that summary, carry on was her</p> <p>4 recommendation.</p> <p>5 Q But two days earlier when she sent an email to</p> <p>6 Giuseppe, she said, "Please do not crush rock further</p> <p>7 until we've have a chance to discuss". So you think it's</p> <p>8 fair they had a chance to discuss and someone made the</p> <p>9 decision to carry on?</p> <p>10 MR. RAY: Object to form.</p> <p>11 A Yes.</p> <p>12 Q (BY MR. FIELDS) At the time, did you -- okay.</p> <p>13 Sorry. I didn't mean to interrupt you. Continue.</p> <p>14 A Yeah. Can you focus on what -- I mean, what do</p> <p>15 you need me to agree to or what do you need me to tell you</p> <p>16 that happened that I was involved in the situations? I</p> <p>17 attended those calls. I can tell you that I remember Joan</p> <p>18 being asked to make the call to reach out to Ray</p> <p>19 Whiteshield. That was part of those discussions. You can</p> <p>20 see the evidence of that here. So time to discuss, I --</p> <p>21 my understanding of that based on those calls was this</p> <p>22 discussion which Joan has provided the summary.</p> <p>23 Q Okay. So did you agree with Mr. Heredia's</p> <p>24 assessment that the site can carry on?</p> <p>25 A You know, me personally, I had recommended prior</p>
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<p>Page 158</p> <p>1 that what we were doing was not wrong and that we should</p> <p>2 pause and reach out. I would maintain that was still my</p> <p>3 position, and if the reach out had gone well, that's her</p> <p>4 decision as to move forward or not. I had provided my</p> <p>5 recommendation previously.</p> <p>6 Q Okay. Thank you so much. All right. We can</p> <p>7 take that one down. Thank you so much, Mr. Weigel. And I</p> <p>8 hope you realize I don't know you, and if my tone starts</p> <p>9 to get snarky or you think I'm upset, go right ahead. I</p> <p>10 promise I am -- I appreciate your candor, and you have</p> <p>11 been so patient. I'm on the last set of emails and we can</p> <p>12 get out of here. I just need to get the ones entered that</p> <p>13 we haven't entered. It's one out of three, but I think</p> <p>14 we'll be at the end of this tunnel.</p> <p>15 MR. FIELDS: So could you pull up Osage Wind</p> <p>16 Privilege 357. I think it was previously admitted as</p> <p>17 Exhibit 91.</p> <p>18 Q (BY MR. FIELDS) And, of course, it's more</p> <p>19 emails. This one you've already seen.</p> <p>20 A Yes.</p> <p>21 Q Okay. So I think you recognize it.</p> <p>22 MR. FIELDS: Scroll down to the bottom, if you</p> <p>23 don't mind, Michelle.</p> <p>24 Q (BY MR. FIELDS) Initially, the email that kicked</p> <p>25 it off was from Mr. Blickensderfer at Guy Engineering to</p>	<p>Page 160</p> <p>1 A I don't know that it's -- you know, it's saying</p> <p>2 that he has had -- this engineer has had experience with</p> <p>3 this permit previously, this type of permit previously.</p> <p>4 Q (BY MR. FIELDS) I mean, would you think it's</p> <p>5 fair to say at least one of those was on an ODOT project</p> <p>6 since they were listed in the email? Do you think that's</p> <p>7 fair?</p> <p>8 A Yeah. There's not a lot of details. You could</p> <p>9 assume ODOT would be included.</p> <p>10 Q And would you also assume it's fair to say that</p> <p>11 the City of Tulsa might have been another entity that</p> <p>12 would have complied or had something to do with this</p> <p>13 mining permit in the past, similar to ODOT?</p> <p>14 A That's a safe assumption based on the email.</p> <p>15 Q Yes, sir. Scroll up. So you forward it to Mr.</p> <p>16 Neil, Willman, and Gilhousen, and then it looks like</p> <p>17 Mr. Willman, the top email, sends it over to Mr. Slade and</p> <p>18 Mr. Scott at Modrall, cc you to keep you in the loop on</p> <p>19 Friday, April 25, 2014, and it looks like there's two</p> <p>20 attachments. Both of those have been admitted as</p> <p>21 exhibits. One is listed "Osage Wind Mineral Permit," a</p> <p>22 PDF, and the other one is</p> <p>23 "TransportationImprovementProgram@osagetribe.org", some</p> <p>24 kind of numbers, another PDF, correct?</p> <p>25 A Yes.</p>
<p>Page 159</p> <p>1 Justin Larson at Tradewind Energy. And I think you said</p> <p>2 Mr. Larson was like an engineer at Tradewind?</p> <p>3 A Yes.</p> <p>4 Q Okay. And then Mr. Larson forwarded it to you</p> <p>5 on April 25, 2014, and I guess Mr. Larson had received the</p> <p>6 initial email from Mr. Blickensderfer about a month and a</p> <p>7 half earlier on February 27th -- excuse me, two months</p> <p>8 earlier. And so if we look at the subject generally just</p> <p>9 to refresh your recollection, the subject is about an</p> <p>10 Osage mining permit. It looks like Mr. Blickensderfer had</p> <p>11 found some that had been involved with ODOT or the City of</p> <p>12 Tulsa and he was passing it along, correct?</p> <p>13 A He was passing along the documentation, yes,</p> <p>14 that he was aware of.</p> <p>15 Q Okay. And then you took that documentation in</p> <p>16 the next email up above and you forwarded that to Darren</p> <p>17 Neil, Steve Willman, and Matt Gilhousen three minutes</p> <p>18 later, correct? At least that's what the email seems to</p> <p>19 report.</p> <p>20 A Yes.</p> <p>21 Q And so based on what's in the email from</p> <p>22 Mr. Larson to you, he's saying at least ODOT and the City</p> <p>23 of Tulsa have complied with this permit in the past and</p> <p>24 he's going to provide information, correct?</p> <p>25 MR. RAY: Object to form.</p>	<p>Page 161</p> <p>1 Q Those are the blue underlined things. I assume</p> <p>2 those are attachments. Is that a fair assessment, you</p> <p>3 think?</p> <p>4 A Seems fair to me.</p> <p>5 Q And then the subject of the -- or the body of</p> <p>6 the email, just kind of look it over real quick and we'll</p> <p>7 get out of here. Let me know when you've looked it over.</p> <p>8 A Okay.</p> <p>9 Q So the first line, "Attached are the documents</p> <p>10 received from Guy Engineering regarding the BIA</p> <p>11 permitting. It appears," and then Mr. Willman continues,</p> <p>12 and then he says, "I do not believe this information</p> <p>13 changes our prior conclusions, but I would appreciate your</p> <p>14 input." So what did that email Mr. Willman forwarded on</p> <p>15 in that information to Modrall Sperling mean to you?</p> <p>16 A My recollection of this effort overall starting</p> <p>17 with Justin Larson and moving forward was to continuously</p> <p>18 try and improve our understanding of what does and doesn't</p> <p>19 apply relative to the sandy soils permit process. This</p> <p>20 would have been simply the collection of that information</p> <p>21 and sending it to what we saw as the experts of</p> <p>22 interpreting that which would have been the Modrall</p> <p>23 Sperling Law Firm.</p> <p>24 Q So you were gathering up information to</p> <p>25 continuously improve, and you were sending it on to the</p>

<p>1 attorney since they were the experts, right?</p> <p>2 A Yes.</p> <p>3 Q Okay. Okay.</p> <p>4 MR. FIELDS: Michelle, can you take that one</p> <p>5 down and bring up Exhibit 93? Oh. Hold on one second.</p> <p>6 Q (BY MR. FIELDS) Mr. Weigel, could you give me</p> <p>7 about one minute? I just need to make sure I'm pulling up</p> <p>8 the right exhibit. Hold on one second.</p> <p>9 A Sure thing.</p> <p>10 Q So let me ask you one more follow-up question</p> <p>11 before I pull up. I want to pull up one of the</p> <p>12 attachments to that email, but before we move away from</p> <p>13 the email, let me ask you, in the second sentence, it</p> <p>14 says, "It appears that the special provision applies to</p> <p>15 specifications for highway construction. Please let us</p> <p>16 know your thoughts." So considering you were -- you were</p> <p>17 getting this information from and these permits and this</p> <p>18 information from an engineering company that had done</p> <p>19 highway construction work in the past, how does that fit</p> <p>20 with wind turbine excavations?</p> <p>21 A That is the reason to include it, I believe, as</p> <p>22 part of the analysis, to determine whether it is or is not</p> <p>23 the same. Ultimately, we determined it's not the same and</p> <p>24 that the memo says wind turbine foundation excavation is</p> <p>25 not the same as building a highway. A highway isn't just</p>	<p>1 capacity, correct?</p> <p>2 MR. RAY: Object to form.</p> <p>3 A That's correct.</p> <p>4 Q (BY MR. FIELDS) And so this is April 25, 2014,</p> <p>5 about, I don't know, six months following the October 31,</p> <p>6 2013 memo that you said made you never be uncertain a</p> <p>7 permit was not required, however you're still trying to</p> <p>8 improve and collect information just to make sure you're</p> <p>9 right, correct?</p> <p>10 MR. RAY: Object to form.</p> <p>11 A The intent for improving and collecting was</p> <p>12 almost never to almost make sure we were correct. It was</p> <p>13 the pattern of legal activity and lawsuits that we were</p> <p>14 expecting that caused us to continue that effort for all</p> <p>15 through construction.</p> <p>16 Q (BY MR. FIELDS) So while you were confident in</p> <p>17 your position, you thought you might want a CYA or to</p> <p>18 protect the company just to make sure if lawsuits ensued</p> <p>19 that you all were in a safer position, correct?</p> <p>20 MR. RAY: Object to form.</p> <p>21 A No. I wouldn't describe it that way, no.</p> <p>22 MR. FIELDS: Okay. Let's look at the</p> <p>23 attachment. So can you take that down, Michelle? This</p> <p>24 was Exhibit 91. Its already been entered. Let's look at</p> <p>25 Exhibit 93, which is Osage Wind Priv 361.</p>
<p>1 digging up a hole and putting it back. It's more</p> <p>2 equivalent to a house foundation or something similar.</p> <p>3 Q Okay. Well, what about the construction aspect</p> <p>4 of it specifically?</p> <p>5 A You know -- you mean the construction aspects of</p> <p>6 highways?</p> <p>7 Q Absolutely.</p> <p>8 A I'm certainly not an expert in constructing a</p> <p>9 highway, but it -- it is relatively -- relatively easy to</p> <p>10 determine that highway construction, building a base,</p> <p>11 building a foundation, adding certain types of rock on top</p> <p>12 of it, putting concrete and asphalt down, that all of that</p> <p>13 is pretty different than digging a hole and putting the</p> <p>14 dirt back in the hole.</p> <p>15 Q But at the end of the day, construction is</p> <p>16 construction regardless if it's a highway or a wind</p> <p>17 turbine. So what did you mean that to mean coming in this</p> <p>18 email chain when you reviewed it?</p> <p>19 MR. RAY: Object to form.</p> <p>20 A That the entire effort was to determine what</p> <p>21 types of construction. Construction is not construction</p> <p>22 when it comes to the law in this case.</p> <p>23 Q (BY MR. FIELDS) Okay. But you're not an</p> <p>24 attorney, right, so you're not providing legal analysis?</p> <p>25 You're a business development expert, and that's your job</p>	<p>1 Q (BY MR. FIELDS) And, again, Mr. Weigel, I</p> <p>2 appreciate you. I know we're -- we're almost there. This</p> <p>3 really is the last little group of questions I have,</p> <p>4 especially since you've already seen this document.</p> <p>5 Do you recall earlier from this morning the</p> <p>6 procedures for obtaining a sandy soil and rock mining</p> <p>7 permit in Osage County, Oklahoma? Do you remember looking</p> <p>8 at this attachment briefly?</p> <p>9 A I do, yes.</p> <p>10 MR. FIELDS: Michelle, do you mind just</p> <p>11 scrolling down to show that it's just this one page?</p> <p>12 Okay. Perfect. That's it. Scroll back up to the top, if</p> <p>13 you don't mind.</p> <p>14 Q (BY MR. FIELDS) So some of the applicable</p> <p>15 C.F.R.s that we've previously mentioned is listed right</p> <p>16 there in the second line of the second sentence. "These</p> <p>17 will be subject to the code of federal regulations under</p> <p>18 25 C.F.R. part 214." That was one of the C.F.R. parts</p> <p>19 that was listed in the memo and in the October 21, 2013</p> <p>20 memo, correct?</p> <p>21 A I'm going to have to look at it, but I believe</p> <p>22 so.</p> <p>23 Q And it was also one of the C.F.R. statutes that</p> <p>24 was listed after Matt Gilhousen requested Lynn Slade</p> <p>25 provide him with the language of the pertinent statutes,</p>

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1 correct?

2 MR. RAY: Object to form.

3 A I'd have to put it back on the screen to

4 confirm, but --

5 Q (BY MR. FIELDS) Yeah. I appreciate you. And

6 just so we're keeping the time date, this was an

7 attachment to the email that Mr. Willman sent to Mr. Slade

8 and Mr. Scott on April 25, 2014. Just keep that in mind

9 because we're going to look through some more emails. I

10 just want to keep April 25, 2014 kind of in your mind.

11 MR. FIELDS: All right. You can take that down,

12 Michelle. Thank you.

13 All right. Then can you pull up Exhibit 89,

14 which is Osage Wind Priv 299.

15 Q (BY MR. FIELDS) And, again, this is about,

16 shoot, four pages of emails. I'm going to skip through

17 the first two pages and focus on the latter two. But for

18 the sake of this, since you've already seen some parts of

19 it, I'm going to let Michelle scroll all the way down and

20 we'll work back in reverse chronological order just to

21 kind of give you an idea of what's going on for some

22 context, okay, Mr. Weigel?

23 A Okay.

24 Q All right. So page 302 is just some email

25 confidentiality stuff at the bottom of the emails from the

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1 attorneys. Mr. Ray is sending an email to himself, I

2 guess, from a personal account to his work account. He's

3 found something, I think it's the letter on October 9th,

4 then you scroll up and it looks like he sends it to

5 Mr. Willman.

6 MR. FIELDS: Stop right there. Scroll down a

7 little because we never really got into it. So stop.

8 Q (BY MR. FIELDS) So it looks like Mr. Ray found a

9 letter on the tribe's website, it's totally inconsistent

10 with the conversations with BIA, and so this is just

11 getting forwarded from person to person, and it looks like

12 this email chain. So this really doesn't matter. I just

13 want to give you some context for what we're going to look

14 at.

15 So on Osage Wind 300, let's look at -- okay.

16 Right here. At the bottom of 300, there's an email from

17 October 11, 2014, 2:46 p.m. Mr. Champagne's emailing, I

18 guess, Joan. "Joan, do you know anything about this

19 permit? I'm coping Bill P. to ask him to find out more."

20 I'm assuming Bill P.'s probably Bill Price, wouldn't you

21 imagine?

22 A I don't know. Probably.

23 Q Do you know any other Bill P.'s who worked with

24 you on this project?

25 A It's plausible that it's Bill Price.

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1 Q Okay. "To find out if contractor got it,

2 assuming we do in fact need it. Until we confirm one way

3 or the other, we need to comply with the letter. Steve."

4 So at this point, Mr. Champagne says "assuming we do in

5 fact need it". They're talking about the permit, right?

6 MR. RAY: Object to form.

7 A "Do you know anything about this permit?" You'd

8 have to see the letter to see what the letter was

9 referencing. Can you remind me which letter this was that

10 was forwarded?

11 Q (BY MR. FIELDS) Yes. This is the October 9,

12 2014 letter, the cease and desist letter from the BIA.

13 There was a delay. It didn't get sent to you guys real

14 quick, so Ryan Ray reportedly went on the Osage Nation's

15 website, pulled up the letter, got it to the defendants,

16 and then you all were discussing it before it actually was

17 formally received by Mr -- I guess. That's the letter

18 we're talking about. I apologize. Sometimes even trying

19 to give the context doesn't make it real clear.

20 A Yeah. Understood.

21 Q Okay. Let's -- let's keep moving on. So

22 Mr. Champagne is asking Mr. Heredia if we need this

23 permit. Is that fair? At least that's what it looks

24 like, correct?

25 MR. RAY: Object to form.

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1 A Yeah. I mean, executives at Steve's level,

2 having not thought about this for a year, is sending it to

3 the person who's responsible for permitting and saying

4 help me interpret this --

5 Q (BY MR. FIELDS) There you go.

6 A -- is how I interpret it.

7 Q Okay. So the next email that we're going to

8 scroll up and look at is, unfortunately, a beast and takes

9 up more than a page. So even though it's mainly on Osage

10 Wind Priv 300 --

11 MR. FIELDS: Can you scroll up to 299? Perfect.

12 Show him the top.

13 Q (BY MR. FIELDS) This looks like an email from

14 Bill Scott to Mr. Willman and Mr. Slade regarding the BIA,

15 and Steve starts it right there. "Thanks for forwarding

16 this. Curious that, to my knowledge, this is the first

17 time the BIA or the Osage have made any mention of a sandy

18 soil mining permit."

19 And the just kind of look at this right at the

20 top. Yeah. Take a look at those first four paragraphs.

21 And that -- that will get most of it. Once you've had a

22 chance to kind of glance over it, I'll ask you to look at

23 a couple specific sentences.

24 A Okay.

25 Q Okay. Perfect. So right out of the box, I have

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1 on the first line of the first paragraph, "I have tried to
2 find a copy of an application for a sandy soil mining
3 permit, a copy of such permit, or a regulation or pamphlet
4 describing the permit or the application process." So
5 because this email was coming from Bill Scott, one of your
6 experts at Modrall, did you find it was funny that he
7 couldn't find the permit that had been forwarded to him as
8 an attachment back on April 25th of 2014?

9 A "Funny" is an interesting choice. I would have
10 preferred better communication.

11 Q Okay. Well, how about the fact that six months
12 after receiving a permit he had been looking for for
13 continuous improvement purposes, as you described it,
14 seemingly, Mr. Scott still can't find a copy of the sandy
15 soil mining permit, even though he had received it as an
16 attachment on April 25, 2014, correct?

17 MR. RAY: Object to form.

18 A I can say he should have received it by this
19 point. He did.

20 Q (BY MR. FIELDS) Okay. If you look at the second
21 to last line of this paragraph, the line -- there's a
22 reference to ODOT. I guess the sentence from the -- above
23 says, "The only references I can find to such a permit are
24 in some Oklahoma Department of Transportation (ODOT)
25 materials." So did you understand that to mean Mr. Scott

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1 was -- couldn't find his permit but he could find
2 references to the permit in ODOT materials? Is that fair?

3 MR. RAY: Object to form.

4 A Yeah. I don't know what research he underwent
5 to respond to this email that he got at this time.

6 Q (BY MR. FIELDS) Yeah. Fair enough. He must
7 have not looked in his email. But looking at the next
8 paragraph, "The most informative item located thus far is
9 an ODOT draft of a special provision for Osage Nation
10 mineral reservation sandy soil permit." So, again, he's
11 not -- he needs the actual sandy soil permit, but he can
12 only find this ODOT special provision, correct?

13 MR. RAY: Object to form.

14 A Yeah.

15 Q (BY MR. FIELDS) And then the next paragraph, it
16 begins, "first, the ODOT document says," so, again, he's
17 referencing the ODOT document, correct?

18 MR. RAY: Object to form.

19 A He appears to be referencing the special
20 provisions for Osage Nation's mineral reservations sandy
21 soil permit document that he has discovered.

22 Q (BY MR. FIELDS) Correct. And then even in the
23 next paragraph that begins "second, the ODOT document
24 indicates," again, it looks like he's focusing on the ODOT
25 document, correct?

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1 A I would agree.

2 Q Let me know when you're -- when you're done with
3 the paragraph that begins "second, the ODOT document".

4 A Okay. Go ahead.

5 Q Okay. Perfect. So would you agree that the
6 paragraph that begins "second, the ODOT document",
7 Mr. Scott seems to be referencing the ODOT document,
8 correct?

9 MR. RAY: Object to form.

10 A I believe so.

11 Q (BY MR. FIELDS) Okay. The next paragraph,
12 "third, the ODOT document indicates", again, this seems
13 that Mr. Scott is referencing the ODOT document, correct?

14 A I would agree.

15 Q Okay. Then the next paragraph, "Without seeing
16 either the application form or the actual permit, we can't
17 say whether the ODOT document accurately describes the
18 circumstances under which the permit may be required.
19 I'll keep searching, and I will check with Lynn, and we'll
20 get back to you." So is it safe to say, at least at this
21 time on October 11, 2014, Mr. Scott is looking for the
22 permit and instead he's only referencing the ODOT
23 document?

24 MR. RAY: Object to form.

25 A He says he's searching, so I believe that his

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1 words were he's searching.

2 Q (BY MR. FIELDS) But we already looked at the
3 email from April 24, 2014 where you all forwarded that
4 attachment to him, correct?

5 MR. RAY: Object to form.

6 A I didn't see that to him specifically, but --

7 Q (BY MR. FIELDS) Okay. Yes, sir.

8 MR. FIELDS: Scroll up, if you don't mind,
9 Michelle.

10 Q (BY MR. FIELDS) So this is another additional
11 email that's on the same chain after Mr. Scott's email
12 about referencing the ODOT document a number of times. It
13 looks like Matt Gilhousen on October 11, 2014. So this is
14 the same day, maybe 45 minutes later throughout the same
15 time zone. It says, "Seems like we're jumping the gun by
16 stopping work." So would you believe that there was
17 actually a work stoppage?

18 MR. RAY: Object to form.

19 A I don't know if there was or not.

20 Q (BY MR. FIELDS) I guess that's what we're trying
21 to figure out. It seems like nobody seems to remember,
22 but he did say someone was jumping the gun by stopping
23 work. Do you think that was related to the Osage Wind
24 construction activities that were happening on October 11,
25 2014?

<p>Page 174</p> <p>1 MR. RAY: Object to form.</p> <p>2 A This is specific to the Osage project in</p> <p>3 response to the letter that requested work stoppage,</p> <p>4 so that would be the topic, yes.</p> <p>5 Q (BY MR. FIELDS) Okay. So it looks like even</p> <p>6 Matt recognizes that he's seen this before. In the next</p> <p>7 paragraph, "See the email below from Bill at Modrall.</p> <p>8 Read his research. I believe this was looked at some time</p> <p>9 ago along with the overall mineral permit, and it</p> <p>10 determined to not be applicable." So wouldn't you agree</p> <p>11 that even Matt agrees at this point that, hey, we've</p> <p>12 looked at this before and thought it didn't apply? Isn't</p> <p>13 that fair?</p> <p>14 MR. RAY: Object to form.</p> <p>15 A That was my opinion, and I understood that to be</p> <p>16 the opinion of my coworkers at Tradewind.</p> <p>17 Q (BY MR. FIELDS) Okay. Two paragraphs down</p> <p>18 Mr. Gilhousen continues, "I wouldn't stop anything until</p> <p>19 someone shows up with a TRO, as we've done nothing wrong.</p> <p>20 I suggest we reach out to BIA ASAP and figure out what the</p> <p>21 hell they are thinking." What did that mean to you when</p> <p>22 you received this forwarded chain of emails?</p> <p>23 MR. RAY: Object to form.</p> <p>24 A TRO is a legal term, right, for --</p> <p>25 Q (BY MR. FIELDS) Yes.</p>	<p>Page 176</p> <p>1 trying to, you know, help.</p> <p>2 Q (BY MR. FIELDS) So what was -- refresh my</p> <p>3 memory. What was Steve Willman's position at that time in</p> <p>4 October of 2014? Wasn't he the general counsel for</p> <p>5 Tradewind Energy?</p> <p>6 A He would have been external counsel --</p> <p>7 Q Oh, that's right.</p> <p>8 A -- for Tradewind Energy.</p> <p>9 Q That's right.</p> <p>10 A I don't know if he was or was not retained by</p> <p>11 Enel, but --</p> <p>12 Q So he would have been the general counsel,</p> <p>13 outside counsel for Tradewind, because I guess his email</p> <p>14 is "DFRGlaw". I guess that's that law firm you referred</p> <p>15 to earlier that I butchered the name on that starts with a</p> <p>16 D.</p> <p>17 A Yeah. Rouse something.</p> <p>18 Q All right. So if it wasn't outside counsel's</p> <p>19 call, it could have been Steve Champagne's call, and</p> <p>20 he's -- he works for Enel in their legal department,</p> <p>21 right, at the time, in 2014 in October?</p> <p>22 MR. RAY: Object to form.</p> <p>23 A Steve Champagne was an employee at Enel and was</p> <p>24 in the legal department.</p> <p>25 Q (BY MR. FIELDS) Thank you so much. Let's scroll</p>
<p>Page 175</p> <p>1 A -- a judge ordering them to stop. So he's</p> <p>2 referencing that he expects the judge to make the</p> <p>3 statement.</p> <p>4 Q Yeah. I believe it means temporary restraining</p> <p>5 order, but, heck, I could be wrong. But you're right.</p> <p>6 The next line, "It's Steve's call, but that's my opinion</p> <p>7 for what it's worth." By "Steve" do you think Matt</p> <p>8 Gilhousen was referring to Steve Champagne, one of the</p> <p>9 attorneys for the defendants?</p> <p>10 MR. RAY: Object to form.</p> <p>11 A It would be -- I don't know which Steve he</p> <p>12 meant, I guess. There were multiple Steves involved.</p> <p>13 There were multiple Steves involved in this process, so I</p> <p>14 can't guess at what he meant.</p> <p>15 Q (BY MR. FIELDS) What other Steves can you recall</p> <p>16 besides Champagne that you worked with on this project?</p> <p>17 A There was also Steve Willman.</p> <p>18 Q Okay. That's a good point. How about we scroll</p> <p>19 up and look at the email chain and see if -- I guess there</p> <p>20 is a Willman on there. You're right. We've got Steve</p> <p>21 Willman and we've got Steve Champagne, so I guess</p> <p>22 theoretically Matt could be referring to either one of</p> <p>23 them that it should be their call, correct?</p> <p>24 MR. RAY: Object to form.</p> <p>25 A I don't know what his intent was. I'm just</p>	<p>Page 177</p> <p>1 up, and we'll hopefully finish up with this exhibit and</p> <p>2 this email. So this is a -- this is the last email in the</p> <p>3 chain. It's an email from Ms. Heredia to a large group</p> <p>4 that Steve Champagne's included, Steve Willman's included,</p> <p>5 and I guess you're sending it to them. You're sending it</p> <p>6 to Joan and ccing this group to -- in this chain on</p> <p>7 October 11, 2014, at 9:33 in the evening. Take a look at</p> <p>8 that short email you sent from your iPhone, and then I'll</p> <p>9 ask you a quick question when you're ready.</p> <p>10 A Okay. Go ahead.</p> <p>11 Q "Our research showed this permit isn't</p> <p>12 applicable, so I think we should require more than just a</p> <p>13 letter stating we should get one before altering course."</p> <p>14 So what did you mean by that?</p> <p>15 A I'm referring to the memo we had relied on.</p> <p>16 Q You think you -- it says, "I think we should</p> <p>17 require more than just a letter stating we should get one</p> <p>18 before altering course." Don't you mean the letter as in</p> <p>19 the cease and desist letter from the Bureau of Indian</p> <p>20 Affairs?</p> <p>21 MR. RAY: Object to form.</p> <p>22 A I don't recall if I had read the letter at this</p> <p>23 point, but I am recommending that we need to rectify our</p> <p>24 research against what the letter says.</p> <p>25 Q (BY MR. FIELDS) I mean, your first line of that</p>

<p>Page 178</p> <p>1 sentence says, this email says, "This is hugely 2 frustrating given the timeline here," so don't you think 3 you were being frustrated by the cease and desist letter 4 that was dated October 9, 2014?</p> <p>5 MR. RAY: Object to form.</p> <p>6 A My frustration I'm expressing in this email is 7 that we had researched this in 2013 for the memo, we had 8 had the -- I believe it was Minerals Council and 9 Mr. Whiteshield -- maybe not Whiteshield, you can check 10 that name -- but with the inspector we had a phone call. 11 This issue should not have been a surprise to anyone. My 12 frustration was I think about that this was an 13 inappropriate way to raise this issue, I felt, based on 14 the pattern of experience.</p> <p>15 Q (BY MR. FIELDS) So you said it shouldn't have 16 been a surprise, but it sounds like it was a surprise to 17 your expert counsel because he couldn't even find the 18 mining permit that had been sent to him on April 25th of 19 2014. So are you saying it shouldn't have been a surprise 20 to your own retained counsel, or do you mean it shouldn't 21 have been a surprise the BIA was only bringing it up now, 22 what seemed to be in the 11th hour, and that you were 23 frustrated with the BIA? Which one were you frustrated 24 with?</p> <p>25 A My frustration was this issue was not new. It</p>	<p>Page 180</p> <p>1 (WHEREUPON, Exhibit 101 was marked for 2 identification.)</p> <p>3 MS. NAGLE: I think you're at 100.</p> <p>4 Q (BY MR. FIELDS) So Mr. Weigel, I'll try to go 5 through the same rubric of showing you everything that's 6 in this, and we'll work back to the most current email 7 chain. Okay?</p> <p>8 A Okay.</p> <p>9 Q Again, if you scroll all the way to the bottom, 10 there's a whole lot of confidentiality disclaimers that we 11 don't care anything about at this time, but attorneys like 12 to include them in their email. So we'll scroll up from 13 that, then we'll get to an email that Mr. Willman 14 emailed -- right there.</p> <p>15 MR. FIELDS: Scroll down a little bit so they 16 can see it.</p> <p>17 Q (BY MR. FIELDS) It looks like an email from 18 Mr. Willman to Mr. Gilhousen and the rest of the team 19 about forward BIA, October 11, 2014. Then the next email 20 is -- so, "This is the letter Ryan Ray provided me from 21 the tribe's website. Someone should probably pass it 22 along to EGP. Should I advise them I forwarded it to Lynn 23 and Bill?" Okay. So it looks like Mr. Willman's passing 24 it on. Okay. I'm going to keep moving on. Do you agree 25 with that, generally?</p>
<p>Page 179</p> <p>1 was an old issue. Certainly I was aware of it. Certainly 2 Matt Gilhousen recalled it. Many of us were involved in 3 these discussions, so --</p> <p>4 Q So to confirm, you were frustrated with the 5 issue. You weren't necessarily frustrated with your 6 counsel or the BIA, correct?</p> <p>7 MR. RAY: Object to form.</p> <p>8 A My frustration was I had, as a developer, my 9 responsibility to work through these issues. I thought 10 this one was resolved and for it to show up in this manner 11 was frustrating to me.</p> <p>12 Q (BY MR. FIELDS) Fair enough. But at the same 13 time, you were also frustrated with the Osage Nation 14 because all the different stumbling blocks happening from 15 that project, correct?</p> <p>16 MR. RAY: Object to form.</p> <p>17 A I don't think I quite said it that way.</p> <p>18 Q (BY MR. FIELDS) I don't think it was in the 19 email. That was just generally what you mentioned 20 earlier. Okay. Let's take that exhibit down. Let me 21 move to the last exhibit that I had. Of course it's going 22 to be another set of emails. It's Osage Wind Priv 233. I 23 don't believe that this one has been admitted yet, and so 24 I guess we're up to 98? No. Oh, yeah. We're over 100. 25 So 101.</p>	<p>Page 181</p> <p>1 A I do.</p> <p>2 Q Okay. So Michelle's going to keep scrolling. 3 She's going to get to the next email chain. Yeah. We can 4 just skip that one. Let's keep going up in the chain. It 5 looks likes there's a large email from Ms. Heredia that is 6 unfortunately forwarded in a real weird, wacky way with 7 all kinds of carrots that make it hard to read, but it has 8 lots of paragraphs broken out.</p> <p>9 MR. FIELDS: Keep scrolling up to the top of 244 10 where it -- I think you got it. There, perfect.</p> <p>11 Q (BY MR. FIELDS) So Ms. Heredia is sending this 12 email forwarding a summary of events that have attached 13 correspondence for your reference. So it looks like she's 14 walking through a timeline with her numbered sequence. 15 Just take a look at that real quick. Again, that's not 16 the questions I had that I will pose to you, I just want 17 you to know the context from where all this email chain is 18 coming from. Let me know when you've had a chance to 19 glance over it.</p> <p>20 A Okay.</p> <p>21 Q Okay. Okay. So in paragraph seven, it starts, 22 "October 11th, Modrall does a quick assessment on the 23 sandy soil mining permit. They could not find anything on 24 the BIA or Osage websites, although they observed mention 25 of this permit from an ODOT site and it appeared to mainly</p>

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1 apply to road activities, or maybe this was all ODOT was
2 concerned with." So would you take that to mean
3 Ms. Heredia was unsure what the permit was applicable to?
4 MR. RAY: Object to form.
5 A I can't answer to her intent. I can only
6 say that --
7 Q (BY MR. FIELDS) Okay. Well, you were a
8 recipient on this email in this email chain, so what was
9 your opinion of it at the time when you read paragraph
10 seven?
11 A I had had conversations prior to this with Joan
12 where we had discussed the sandy soils permit, so her
13 representation here I would expect to include the analysis
14 we had done in 2013 as that had been discussed.
15 Q But, again, don't you find it odd that on
16 October 11th Modrall was doing a quick assessment of a
17 sandy soil mining permit that they had received six months
18 earlier on October -- or April 25, 2014, that somehow just
19 got lost in the shuffle?
20 MR. RAY: Object to the form.
21 A I would much prefer a perfect law firm, but I'm
22 not sure I would say it was odd, but certainly the
23 information was available.
24 Q (BY MR. FIELDS) Okay. To kind of change gears,
25 in referencing ODOT, don't you think it would make sense

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1 that ODOT would be concerned about roads since it's the
2 Oklahoma Department of Transportation? Wouldn't their
3 construction activities be focused on road construction?
4 A Yeah. I don't know everything that ODOT does.
5 I assume there's road improvements and ditches and all
6 kinds of activities that they're responsible for.
7 Q I don't know about you in Kansas, but I wish
8 they would do a better job. The potholes we have are
9 terrible.
10 MR. FIELDS: Okay. You can scroll up, Michelle,
11 to -- I guess to see where this email chain continued on.
12 Q (BY MR. FIELDS) So it looks like at the top of
13 this page, original message, Steve Champagne is sending an
14 email to Ms. Heredia, including you, Aaron Weigel, in the
15 cc line. In the second line, it says, "My inclination is
16 to do nothing until we actually receive the letter." So
17 did you take that to mean Mr. Champagne was saying let's
18 hold off until we actually receive the letter on October
19 12, 2014, because there was that delay you were describing
20 between pulling to off the Osage website and formally
21 receiving it? Do you think that's fair?
22 MR. RAY: Object to form.
23 A Yeah. I -- it's tough to tell. I assume he was
24 waiting for a communication.
25 Q (BY MR. FIELDS) So it's possible. And then the


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1 last paragraph even -- or second to last paragraph that
2 begins with a carrot. "Meanwhile, if Modrall can see what
3 more they can learn about what facts actually result in
4 the need for a permit and what the actual requirements are
5 for getting a permit, that will be helpful when preparing
6 for the calls with Ray and Phillip." So did that at the
7 time mean to you that Steve Champagne wanted Modrall to
8 learn more about the permit's requirements to see if they
9 needed to get it before they have the conversations with
10 the BIA representatives?
11 MR. RAY: Object to form.
12 A My interpretation is him asking for more
13 information.
14 Q (BY MR. FIELDS) Okay. But, again, you had said
15 multiple times that you had never been uncertain that a
16 permit was not required for this project, correct?
17 MR. RAY: Object to form.
18 A I, Aaron Weigel, have never been uncertain that
19 a permit was not required.
20 Q (BY MR. FIELDS) Absolutely. That's your
21 personal opinion. Thank you. Okay.
22 MR. FIELDS: Let's scroll up, Michelle, and go
23 to the last page of this email chain.
24 Q (BY MR. FIELDS) Okay. So here's another email
25 from Mr. Scott at Modrall, and he is sending someone

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1 something, October 13, 2014, at 7:24 in the morning.
2 Second line, "We will see what more we can learn about the
3 sandy soil permit and will report back." Do you think at
4 this point Mr. Scott had received a copy of the permit yet
5 or do you think he was still looking for it, if you know?
6 MR. RAY: Object to form.
7 A I have no idea.
8 Q (BY MR. FIELDS) Okay. Let's scroll up to the
9 next email on the chain. Mr. Champagne emailing Mr. Scott
10 and including you in the cc line. "Thanks. Ideally, if
11 we can get ourselves comfortable that we do not need this
12 permit, it may be good to go through the solicitor's
13 office to resolve this." So Mr. Champagne is saying,
14 ideally, if we can get ourselves comfortable, that we do
15 not need the permit on October 14, 2014. It sounds to me
16 that he might not have been as confident as you were that
17 the permit was not required, correct?
18 MR. RAY: Object to form.
19 A Nothing about what he said looks like he was
20 un-confident. It seems like he's asking my opinion.
21 Q (BY MR. FIELDS) He says "if we can get ourselves
22 comfortable". Is that a question, or do you think that
23 he's -- you're saying that it's your opinion he was
24 exuding confidence at this point that a permit was not
25 required?

<p>1 MR. RAY: Object to form.</p> <p>2 A I can't, you know, read the tone of his email.</p> <p>3 Q (BY MR. FIELDS) But in your opinion, was he</p> <p>4 confident the permit was not required or not confident?</p> <p>5 MR. RAY: Object to form.</p> <p>6 A He was asking for more information in this email</p> <p>7 chain, so I suspect that he needed more information.</p> <p>8 Q (BY MR. FIELDS) Okay. But why would you need</p> <p>9 more information if you were confident a permit wasn't</p> <p>10 required?</p> <p>11 MR. RAY: Object to form.</p> <p>12 A I can't tell you. You'd have to ask him whether</p> <p>13 he was --</p> <p>14 Q (BY MR. FIELDS) Okay.</p> <p>15 A -- familiar with the issue at that point or not</p> <p>16 or if he was as closely engrained in it as I was or if he</p> <p>17 needed a refresher course as executives sometimes do.</p> <p>18 Q I would definitely like to ask him, we just</p> <p>19 haven't got it him yet. But I appreciate your time.</p> <p>20 Okay. Next email, the last one in this chain.</p> <p>21 Let's scroll up so you can see it all. So it's from</p> <p>22 Champagne again to -- or from Scott at Modrall to</p> <p>23 Mr. Champagne, ccing a number of people in the group,</p> <p>24 including yourself in the fourth cc line, Monday,</p> <p>25 October 13, 2014, subject, BIA sandy soil permit. I'll</p>	<p>1 the BIA form permit handy. I am still trying to attain a</p> <p>2 copy of that permit as well as the application form</p> <p>3 without contacting the BIA directly." So, again,</p> <p>4 October 13, 2014, Mr. Scott with Modrall Sperling still</p> <p>5 does not have a copy of the sandy soil permit application</p> <p>6 form, correct?</p> <p>7 A I think he's clear about what he has.</p> <p>8 Q Well, if he has it, he doesn't know he has it,</p> <p>9 right, otherwise, he wouldn't be asking for it?</p> <p>10 A Yeah.</p> <p>11 Q Do you have any opinion on why he wouldn't want</p> <p>12 to contact the BIA directly?</p> <p>13 MR. RAY: Object to form.</p> <p>14 A I do not know that. Yeah.</p> <p>15 Q (BY MR. FIELDS) I guess in your position,</p> <p>16 though, you were on the business development side and</p> <p>17 were -- you mentioned earlier in your deposition that it</p> <p>18 was important to keep good relations with the constituents</p> <p>19 and like the project people that were involved, but in</p> <p>20 this instance, it looks like the open lines of</p> <p>21 communication might not have been so open, at least</p> <p>22 regarding the BIA after the cease and desist letter was</p> <p>23 sent on October 9th. Is that fair to say?</p> <p>24 MR. RAY: Object to form.</p> <p>25 A At this point, the project had continued to</p>
<p>1 give you a second to look it over.</p> <p>2 A Okay. Got it.</p> <p>3 Q All right. So it looks like Mr. Scott is</p> <p>4 describing a conversation he had with Mr. Dotson at the</p> <p>5 Oklahoma Department of Transportation in the first line.</p> <p>6 Does that seem like a fair summary of the introduction of</p> <p>7 this paragraph?</p> <p>8 A I would agree.</p> <p>9 Q And in the third line, "Mr. Dotson advised that</p> <p>10 the ODOT special standard specification was updated March</p> <p>11 of this year to track the requirements and conditions of</p> <p>12 the sandy soil permit." So doesn't it seem pretty clear</p> <p>13 that Mr. Dotson is describing ODOT's standards and</p> <p>14 specifications, not necessarily the BIA's sandy soil</p> <p>15 permit specifications, correct?</p> <p>16 MR. RAY: Object to the form.</p> <p>17 A Yeah. I -- it looks like Bill had reached out,</p> <p>18 Bill Price, and --</p> <p>19 Q (BY MR. FIELDS) Yes, sir.</p> <p>20 A -- this was -- this was the summary of his</p> <p>21 conversation.</p> <p>22 Q Yes, sir. I appreciate that.</p> <p>23 A There was more information available.</p> <p>24 Q Okay. Then moving on to the last few lines of</p> <p>25 the paragraph, "Mr. Dotson said he did not have a copy of</p>	<p>1 transition into the hands of Enel's control and less into</p> <p>2 the hands of Tradewind being responsible for those direct</p> <p>3 communications. In my experience, when people send cease</p> <p>4 and desist letters, conversations tend to move more</p> <p>5 towards letters.</p> <p>6 Q (BY MR. FIELDS) So is it fair to say if you --</p> <p>7 if Enel -- or if Enel wasn't -- wouldn't have been in</p> <p>8 control and it still would have been under Tradewind's</p> <p>9 purview, would you have recommended reaching out to the</p> <p>10 BIA directly, as you had previously?</p> <p>11 MR. RAY: Object to the form. Calls for</p> <p>12 speculation.</p> <p>13 MR. FIELDS: What was the additional -- sorry.</p> <p>14 What did you say, Ryan? I couldn't get the rest of that</p> <p>15 objection. I heard the form part. What was the rest?</p> <p>16 MR. RAY: Object to form. Calls for</p> <p>17 speculation.</p> <p>18 Q (BY MR. FIELDS) Okay. I was asking for your</p> <p>19 opinion, whatever you think.</p> <p>20 A Yeah. I honestly don't know. It wouldn't have</p> <p>21 been -- it wouldn't have been my call. It would have been</p> <p>22 the owner's.</p> <p>23 Q (BY MR. FIELDS) But you earlier testified that</p> <p>24 you would have been in favor of a pause to crushing in</p> <p>25 favor of potentially working out an amicable solution?</p>

<p>Page 190</p> <p>1 MR. RAY: Object to form.</p> <p>2 A I can tell you if I had been in the boardroom</p> <p>3 with my boss and Matt, that we would have absolutely</p> <p>4 considered picking up the phone and trying to have a</p> <p>5 conversation.</p> <p>6 Q (BY MR. FIELDS) Okay. I appreciate that.</p> <p>7 Let me just look and see if I have any other</p> <p>8 questions or documents. I think we already admitted this</p> <p>9 one as Exhibit 101. Anything else?</p> <p>10 All right. The United States passes the</p> <p>11 witness. Thank you so much, Mr. Weigel.</p> <p>12 MR. RAY: We'll just take a short break, a ten</p> <p>13 minute break.</p> <p>14 THE VIDEOGRAPHER: We are off the record at</p> <p>15 2:58.</p> <p>16 (Break taken.)</p> <p>17 THE VIDEOGRAPHER: We are back on the record at</p> <p>18 3:05.</p> <p>19 MR. RAY: The Defendant will reserve their</p> <p>20 questions of Mr. Weigel for the time of trial, and he will</p> <p>21 exercise his right to read and sign.</p> <p>22 THE VIDEOGRAPHER: We are off the record at</p> <p>23 3:05.</p> <p>24 (DEPOSITION CONCLUDED AT 3:05 P.M.)</p> <p>25</p>	<p>Page 192</p> <p>1 JURAT</p> <p>2 UNITED STATES OF AMERICA and OSAGE MINERALS COUNCIL v.</p> <p>3 OSAGE WIND, LLC, et al.</p> <p>4 I, Aaron Weigel, do hereby state under oath that</p> <p>5 I have read the above and foregoing deposition in its</p> <p>6 entirety and that the same is a full, true and correct</p> <p>7 transcription of my testimony so given at said time and</p> <p>8 place.</p> <p>9</p> <p>10</p> <p>11 _____</p> <p>12 Signature of Witness</p> <p>13</p> <p>14</p> <p>15 Subscribed and sworn to before me, the</p> <p>16 undersigned Notary Public in and for the State of Arkansas</p> <p>17 by said witness, Aaron Weigel, on this _____ day</p> <p>18 of _____, 2021.</p> <p>19</p> <p>20</p> <p>21</p> <p>22 _____</p> <p>23 NOTARY PUBLIC</p> <p>24 MY COMMISSION EXPIRES: _____</p> <p>25 JOB NO. 151413</p>
<p>Page 191</p> <p>1 ERRATA SHEET</p> <p>2 UNITED STATES OF AMERICA and OSAGE MINERALS COUNCIL v.</p> <p>3 OSAGE WIND, LLC, et al.</p> <p>4 DEPOSITION OF AARON WEIGEL</p> <p>5 REPORTED BY: KARLI DANIELS, CSR, RPR, CCR</p> <p>6 DATE DEPOSITION TAKEN: JUNE 29, 2021</p> <p>7 JOB NO. 151413</p> <p>8 PAGE LINE IS SHOULD BE</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____</p> <p>21 _____</p> <p>22 _____</p> <p>23 _____</p> <p>24 _____</p> <p>25 _____</p>	<p>Page 193</p> <p>1 CERTIFICATE</p> <p>2 I, Karli Daniels, Certified Shorthand Reporter,</p> <p>3 Registered Professional Reporter, Certified Court</p> <p>4 Reporter, do hereby certify that the above-named Aaron</p> <p>5 Weigel was by me first duly sworn to testify the truth,</p> <p>6 the whole truth, and nothing but the truth, in the case</p> <p>7 aforesaid; that the above and foregoing deposition was by</p> <p>8 me taken and transcribed pursuant to agreement, and under</p> <p>9 the stipulations hereinbefore set out; and that I am not</p> <p>10 an attorney for nor relative of any of said parties or</p> <p>11 otherwise interested in the event of said action.</p> <p>12 IN WITNESS WHEREOF, I have hereunto set my hand</p> <p>13 and official seal this 8th day of July, 2021.</p> <p>14 </p> <p>15</p> <p>16 KARLI DANIELS, CSR, RPR, CCR</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>